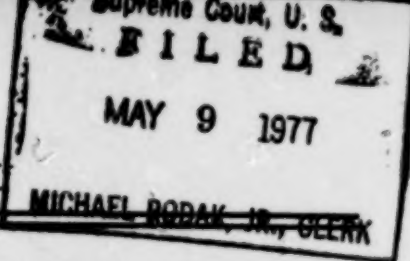


APPENDIX



**In the Supreme Court of the United States**

OCTOBER TERM, 1976

No. 76-529

MONTANA POWER COMPANY, ET AL., *Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 76-585

AMERICAN PETROLEUM INSTITUTE, ET AL., *Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 76-594

INDIANA-KENTUCKY ELECTRIC CORPORATION, ET AL., *Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 76-603

ALABAMA POWER COMPANY, ET AL., *Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 76-619

UTAH POWER & LIGHT COMPANY, ET AL., *Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 76-620

WESTERN ENERGY SUPPLY AND TRANSMISSION ASSOCIATES, ET AL.,  
*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONS FOR WRITS OF CERTIORARI FILED  
ON OCTOBER 15 (NO. 76-529), 27 (NO. 76-585), 29 (NOS. 76-594,  
76-603), AND NOVEMBER 1, 1976 (NOS. 76-619, 76-620)

CERTIORARI GRANTED APRIL 4, 1977

**In the Supreme Court of the United States**

OCTOBER TERM, 1976

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No. 76-529

MONTANA POWER COMPANY, ET AL., *Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

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No. 76-585

AMERICAN PETROLEUM INSTITUTE, ET AL., *Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

---

No. 76-594

INDIANA-KENTUCKY ELECTRIC CORPORATION, ET AL.,  
*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

---

No. 76-603

ALABAMA POWER COMPANY, ET AL., *Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

---

No. 76-619

UTAH POWER & LIGHT COMPANY, ET AL., *Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.



No. 76-620

WESTERN ENERGY SUPPLY AND TRANSMISSION ASSOCIATES,  
ET AL., *Petitioners*,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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\* The "significant deterioration" regulations, as reprinted on pp. 91a to 291a herein, appear on pp. 1-36, 688-98 of the Joint Appendix filed in the consolidated cases below.

**Composite of Relevant Docket Entries Entered in Various  
United States Courts of Appeals in Which Petitions Below  
Were Considered \***

**DATE**

**1974**

Nov. 27 [Sixth Circuit]\*\*—Joint Petition to review an order of the United States Environmental Protection Agency ("EPA") filed in the Sixth Circuit, No. 74-2297, by Petitioners: The Dayton Power and Light Company; Kentucky Power Company; Kentucky Utilities Company; Ohio Edison Company; and Ohio Power Company.

Nov. 27—Petition to review an order of the EPA filed in the District of Columbia Circuit, No. 74-2063, by Petitioner, the Sierra Club; c/m 11/27/74.

Dec. 5—Petition to review an order of the EPA filed in the District of Columbia Circuit, No. 74-2079, by Petitioner, the Sierra Club; c/m 12/5/74.

Dec. 20 [Tenth Circuit]—Joint Petition to review an order of the EPA filed in the Tenth Circuit, No. 74-1866, by Petitioners: Public Service Company of Colorado; Colorado-Ute Electric Association, Inc.; Platte River Power Authority; Cheyenne Light, Fuel,

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\* Petitions to review the Environmental Protection Agency's "significant deterioration" regulations (40 C.F.R. §§ 52.01 (d), (f), and 52.21 (1976)) were filed in the United States Courts of Appeals for the Fifth, Sixth, Seventh, Ninth, Tenth, and District of Columbia Circuits. All petitions filed in Circuits other than the District of Columbia Circuit were eventually transferred to that Circuit, where they were consolidated for review.

\*\* Bracketed information denotes the United States Court of Appeals in which the docket entry was made if other than the United States Court of Appeals for the District of Columbia Circuit.

and Power Company; and Pacific Power & Light Company.

Dec. 23 [Tenth Circuit]—Petition to review an order of the EPA filed in the Tenth Circuit, No. 74-1869, by Petitioner, Utah Power & Light Company.

Dec. 26 [Ninth Circuit]—Joint petition to review an order of the EPA filed in the Ninth Circuit, No. 74-3460, by Petitioners: Montana Power Company; Pacific Power & Light Company; Portland General Electric Company; Puget Sound Power & Light Company; and Washington Water Power Company. [This joint petition to review was transferred on April 1, 1975 by the Ninth Circuit to the Sixth Circuit and refiled on April 15, 1975 in the Sixth Circuit, No. 75-1398.]

Dec. 27 [Seventh Circuit]—Petition to review an order of the EPA filed in the Seventh Circuit, No. 74-2055, by Petitioners: Indiana-Kentucky Electric Corporation; Indiana & Michigan Electric Company; Indiana Statewide Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; Northern Indiana Public Service Company; Public Service Company of Indiana, Inc.; and Southern Indiana Gas and Electric Company.

Dec. 27 [Sixth Circuit]—Petition to review an order of the EPA filed in the Sixth Circuit, No. 74-2358, by Petitioners: Buckeye Power, Inc.; The Cincinnati Gas & Electric Company; The Cleveland Electric Illuminating Company; Columbus and Southern Ohio Electric Company; and Ohio Valley Electric Corporation.

Dec. 27 [Fifth Circuit]—Joint petition to review an order of the EPA filed in the Fifth Circuit, No. 74-4234, by Petitioners: Alabama Power Company; Georgia Power Company; Gulf Power Company; and Mississippi Power Company. [This joint petition to review was transferred on January 15, 1975 by the Fifth Circuit

to the Sixth Circuit and refiled on January 31, 1975 in the Sixth Circuit, No. 75-1118.]

Dec. 30 [Ninth Circuit]—Joint petition to review an order of the EPA filed in the Ninth Circuit, No. 74-3501, by Petitioners: Salt River Project Agricultural Improvement and Power District; Arizona Public Service Company; Tucson Gas & Electric Company; Nevada Power Co.; Pacific Power & Light Company; Arizona Electric Power Co-Op, Inc.; San Diego Gas & Electric Co.; and Southern California Edison Company. [This joint petition to review was transferred on April 1, 1975 by the Ninth Circuit to the Sixth Circuit and refiled on April 15, 1975 in the Sixth Circuit, No. 75-1398.]

Dec. 30—Order per Chief Judge Bazelon in the District of Columbia Circuit, Nos. 74-2063 and 74-2079, granting Petitioners' motion to consolidate petitions for review and Nos. 74-2063 and 74-2079 are consolidated for consideration on the merits.

1975

Jan. 2 [Sixth Circuit]—Petition to review an order of the EPA filed in the Sixth Circuit, No. 75-1001, by Petitioners: American Petroleum Institute; The Standard Oil Company (Ohio); Atlantic Richfield Company; Continental Oil Company; Exxon Corporation; Gulf Oil Corporation; Mobil Oil Corporation; Shell Oil Company; Texaco Inc.; and Union Oil Company of California.

Jan. 3 [Tenth Circuit]—Petition to review an order of the EPA filed in the Tenth Circuit, No. 75-1006, by Petitioners: Pacific Coal Gasification Company and Transwestern Coal Gasification Company.

Jan. 6 [Tenth Circuit]—Petition to review an order of the EPA filed in the Tenth Circuit, No. 75-1007, by Petitioner, Utah International Inc.



**Jan. 7**—Order of the Clerk of the District of Columbia Circuit, in No. 74-2063, that Western Energy Supply and Transmission Asso., Arizona Public Service Co., The Dayton Power and Light Co., Kentucky Power Co., Kentucky Utilities Co., Ohio Edison Co., Ohio Power Co., Utah Power & Light Co., and Edison Electric Institute are granted leave to intervene.

**Jan. 31** [Sixth Circuit]—Joint petition to review an order of the EPA filed by Petitioners: Alabama Power Company; Georgia Power Company; Gulf Power Company; and Mississippi Power Company; refiled in the Sixth Circuit, No. 75-1118. [This joint petition to review was initially filed on December 27, 1974 in the Fifth Circuit, No. 74-4234; transferred on January 15, 1975 by the Fifth Circuit to the Sixth Circuit; and refiled on January 31, 1975 in the Sixth Circuit, No. 75-1118.]

**Feb. 18**—Certified Index to the record filed in the District of Columbia Circuit, Nos. 74-2063 and 74-2079.

**Mar. 24** [Ninth Circuit]—Order entered in the Ninth Circuit to transfer Case Nos. 74-3447, 74-3460 and 74-3501 in the Ninth Circuit to the Sixth Circuit.

**Mar. 31** [Tenth Circuit]—Order entered in the Tenth Circuit to transfer Case Nos. 74-1866, 74-1869, 74-1871, 75-1006 and 75-1007 in the Tenth Circuit to the District of Columbia Circuit.

**Apr. 1** [Ninth Circuit]—Records of Ninth Circuit Case Nos. 74-3447, 74-3460 and 74-3501 transferred from the Ninth Circuit to the Clerk for the Sixth Circuit.

**Apr. 2**—Case Nos. 74-1866, 74-1869, 74-1871, 75-1006 and 75-1007 in the Tenth Circuit transferred to the District of Columbia Circuit and entered as Nos. 75-1368, 75-1369, 75-1370, 75-1371 and 75-1372 in the District

of Columbia Circuit. *See* Tenth Circuit order to transfer entered March 31, 1975.

**Apr. 15** [Sixth Circuit]—Joint petition to review an order of the EPA filed by Petitioners: Montana Power Company; Pacific Power & Light Company; Portland General Electric Company; Puget Sound Power & Light Company; and Washington Water Power Company; refiled in the Sixth Circuit, No. 75-1398. [This joint petition to review was initially filed on December 26, 1974 in the Ninth Circuit, No. 74-3460; transferred on April 1, 1975 by the Ninth Circuit to the Sixth Circuit; and refiled on April 15, 1975 in the Sixth Circuit, No. 75-1398.]

**Apr. 15** [Sixth Circuit]—Joint petition to review an order of the EPA filed by Petitioners: Salt River Project Agricultural Improvement and Power District; Arizona Public Service Company; Tucson Gas & Electric Company; Nevada Power Co.; Pacific Power & Light Company; Arizona Electric Power Co-Op, Inc.; San Diego Gas Electric Co.; and Southern California Edison Company; refiled in the Sixth Circuit, No. 75-1398. [This joint petition to review was initially filed on December 30, 1974 in the Ninth Circuit, No. 74-3501; transferred on April 1, 1975 by the Ninth Circuit to the Sixth Circuit; and refiled on April 15, 1975 in the Sixth Circuit, No. 75-1398.]

**Apr. 15** [Sixth Circuit]—Case Nos. 74-3447, 74-3460 and 74-3501 in the Ninth Circuit transferred to the Sixth Circuit and entered as No. 75-1398 in the Sixth Circuit. *See* Ninth Circuit order to transfer entered March 24, 1975.

**May 21** [Seventh Circuit]—Order entered in the Seventh Circuit to transfer Case No. 74-2055 in the Seventh Circuit to the District of Columbia Circuit.

June 10—Case No. 74-2055 in the Seventh Circuit transferred to the District of Columbia Circuit and entered as No. 75-1575 in the District of Columbia Circuit. See Seventh Circuit order to transfer entered May 21, 1975.

June 16 [Sixth Circuit]—Judgment entered in the Sixth Circuit to transfer Case Nos. 74-2297; 74-2358; 75-1001; 75-1118; and 75-1398 in the Sixth Circuit to the District of Columbia Circuit.

July 14—Case Nos. 74-2297; 74-2358; 75-1001; and 75-1118 in the Sixth Circuit transferred to the District of Columbia Circuit and entered as Case Nos. 75-1663; 75-1664; 75-1665; and 75-1666 in the District of Columbia Circuit. See Sixth Circuit Judgment entered June 16, 1975.

Aug. 6—Case No. 75-1398 in the Sixth Circuit transferred to the District of Columbia Circuit and entered as Case Nos. 75-1763 and 75-1764 in the District of Columbia Circuit. See Sixth Circuit Judgment entered June 16, 1975.

August 6—Clerk's order in Nos. 75-1763 and 75-1764 that the petitions for review filed by the following parties shall be assigned the following docket numbers in this court: *Kennecott Copper Corporation v. EPA*, No. 75-1668; *Montana Power Company, et al. v. U.S. Environmental Protection Agency*, No. 75-1763; and *Salt River Project Agricultural Improvement and Power District, et al. v. EPA and Russell E. Train, Administrator*, No. 75-1764.

August 8—Clerk's order granting motion for leave to intervene by The Sierra Club; the Metropolitan Washington Coalition for Clean Air; the New Mexico Citizens for Clean Air and Water; and Sally Rodgers. Counsel for the intervenors may participate in oral argument only to the extent allowable under Rule 12

of the General Rules of this Court. (Nos. 75-1368; 75-1369; 75-1370; 75-1371; 75-1372; 75-1763 and 75-1764.)

August 8—Clerk's order in Nos. 75-1763 and 75-1764 granting motion of The State of Nevada for leave to intervene in the consolidated cases. Counsel for the intervenor may participate in oral argument only to the extent allowable under Rule 12 of the General Rules of this Court. [Order vacated per Clerk's order of 12/3/75 in Nos. 75-1763 and 75-1764.]

August 8—Order per Chief Judge Bazelon granting motion of Sierra Club, *et al.* and the State of New Mexico for consolidation and Nos. 74-2063, 74-2079, 75-1368, 75-1369, 75-1370, 75-1371, 75-1372, 75-1575, 75-1663, 75-1664, 75-1665, 75-1666, 75-1667, 75-1763 and 75-1764 are hereby consolidated for consideration on the merits.

August 8—Order per Chief Judge Bazelon that the certified index to record filed in Nos. 74-2063 and 74-2079 shall be deemed filed in all of the consolidated cases.

August 8—Certified index to record (filed in Nos. 74-2063 and 74-2079 on 2-18-75).

Nov. 24—Motion of Intervenor, the State of Nevada, in Nos. 75-1763 and 75-1764 to vacate order granting intervention.

Nov. 26—Joint Appendix, Vols. I & II; c/m 11/26/75.

Dec. 3—Clerk's order in Nos. 75-1763 and 75-1764 granting motion of Intervenor, the State of Nevada, to vacate order granting intervention and the order filed August 8, 1975 in the consolidated cases granting the motion of the State of Nevada for leave to intervene be, and the same hereby is, vacated; the Clerk is directed to make an appropriate notation on the records of his office to reflect the vacation of the aforesaid intervention.



Dec. 17—Per Curiam order en banc that Petitioners' suggestion for appropriateness of initial hearing en banc is denied; Chief Judge Bazelon; Wright, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, Circuit Judges.

1976

Feb. 25—Order per Chief Judge Bazelon that the motion for expedited hearing of these consolidated cases is granted. (Nos. 74-2063 and 74-2079 only).

June 9—Argued before Circuit Judges Wright, Robinson and Wilkey.

August 2—Opinion for the Court filed by Circuit Judge Wright.

August 2—Judgment affirming order of the EPA (N).

August 24—Certified copy of the opinion and judgment issued to the EPA.

Oct. 20—Notice from Clerk, Supreme Court that petition for certiorari was filed in S.C.No. 76-529 on Oct. 15, 1976. (Filed in No. 75-1763).

Oct. 29—Notice of filing of a petition for writ of certiorari in S.C. No. 76-585 on October 27, 1976. (Filed in No. 75-1665).

Nov. 2—Notice from Clerk, Supreme Court that petition for certiorari was filed in S.C. No. 76-594 on Oct. 29, 1976. (Filed in No. 75-1575).

Nov. 3—Notice of filing of petition for writ of certiorari in S.C. No. 76-603 on October 29, 1976. (Filed in No. 75-1666).

Nov. 3—Notice of filing of petition for writ of certiorari in S.C. No. 76-617 on November 1, 1976. (Filed in Nos. 74-2063 and 74-2079).

Nov. 3—Notice of filing of petition for writ of certiorari in S.C. No. 76-619 on November 1, 1976. (Filed in Nos. 75-1368 and 75-1369).

Nov. 3—Notice of filing of petition for writ of certiorari in S.C. No. 76-620 on November 1, 1976. (Filed in Nos. 75-1372 and 75-1764).

1977

April 11—Certified copy of order from Clerk, Supreme Court, granting writ of certiorari limited to certain questions in S.C. No. 76-529 on April 4, 1977. (See order for questions). (Filed in No. 75-1763).

April 11—Certified copy of order from Clerk, Supreme Court, granting writ of certiorari limited to certain questions in S.C. No. 76-585 on April 4, 1977. (See order for questions). (Filed in No. 75-1665).

April 11—Certified copy of order from Clerk, Supreme Court, granting writ of certiorari limited to certain questions in S.C. No. 76-594 on April 4, 1977. (See order for questions). (Filed in No. 75-1575).

April 11—Certified copy of order from Clerk, Supreme Court, granting writ of certiorari limited to certain questions in S.C. No. 76-603 on April 4, 1977. (See order for questions). (Filed in No. 75-1666).

April 11—Certified copy of order from Clerk, Supreme Court, denying writ of certiorari in S.C. No. 76-617 on April 4, 1977. (This was Sierra Club's petition; filed in Nos. 74-2063 and 74-2079).

April 11—Certified copy of order from Clerk, Supreme Court, granting writ of certiorari limited to certain questions in S.C. No. 76-619 on April 4, 1977. (See order for questions.) (Filed in Nos. 75-1368 and 75-1369).

April 11—Certified copy of order from Clerk, Supreme Court, granting writ of certiorari limited to certain questions in S.C. No. 76-620 on April 4, 1977. (This was Western Energy Supply and Transmission Associates, *et al.*, petition; filed in No. 74-2063).

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 74-2297

[Filed November 27, 1974]

THE DAYTON POWER AND LIGHT COMPANY,  
KENTUCKY POWER COMPANY,  
KENTUCKY UTILITIES COMPANY,  
OHIO EDISON COMPANY,  
OHIO POWER COMPANY,  
*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

**Joint Petition for Review**

Pursuant to 42 U.S.C. § 1857h-5(b)(1) (1970) and Rule 15, Federal Rules of Appellate Procedure for the United States Court of Appeals, Petitioners, the Dayton Power and Light Company, Kentucky Power Company, Kentucky Utilities Company, Ohio Edison Company, and Ohio Power Company, petition the Court for review of the regulation promulgated by Respondent, the United States Environmental Protection Agency, on November 27, 1974, amending Subpart A, Section 52.21 of the regulations of the United States Environmental Protection Agency relating to approvals and promulgations of State implementation plans under the Clean Air Act.

12a

/s/ HARRY F. VOIGHT  
Harry F. Voight

/s/ HENRY V. NICKEL  
Henry V. Nickel  
LEBOEUF, LAMB, LEIBY & MACRAE  
1757 N Street, N.W.  
Washington, D. C. 20036  
(202) 872-8668  
*Attorneys for Petitioners*

[Certificate of Service omitted in printing]

13a

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

No. 74-1866

[Filed December 20, 1974]

PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation, COLORADO-UTE ELECTRIC ASSOCIATION, INC., a Colorado corporation, PLATTE RIVER POWER AUTHORITY, a Colorado nonprofit corporation, CHEYENNE LIGHT, FUEL AND POWER COMPANY, a Wyoming corporation, and PACIFIC POWER & LIGHT COMPANY, a Maine corporation, *Petitioners*,

vs.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

**Joint Petition for Review**

Pursuant to 42 USC § 1857h-5(b) and Rule 15 of the Federal Rules of Appellate Procedure for the United States Court of Appeals, the above named petitioners hereby petition this Court for review of the regulation of the United States Environmental Protection Agency published in the Federal Register December 5, 1974, Volume 39, pages 42510-42517, amending Subpart A, Section 52.21 of the regulations of the United States Environmental Protection Agency relating to approvals and promulgation of state implementation plans under the Clean Air Act, as amended. Said regulations are attached hereto and incorporated herein as Exhibit A. [Exhibit A omitted in printing.]

Petitioners, Public Service Company of Colorado and Colorado-Ute Electric Association, Inc., are public utilities operating in the State of Colorado; Platte River Power Authority is a Colorado nonprofit corporation being wholly



owned and an instrumentality of the municipalities of Estes Park, Longmont, Loveland and Fort Collins, Colorado; Cheyenne Light, Fuel and Power Company and Pacific Power and Light Company are public utilities operating in the State of Wyoming. All of said utilities are directly affected by said regulations.

Dated this 20th day of December, 1974.

Respectfully submitted,

LEE, BRYANS, KELLY & STANSFIELD

/s/ BRYANT O'DONNELL  
Bryant O'Donnell

/s/ DONALD D. CAWELTI  
Donald D. Cawelti  
990 Public Service Company Bldg.  
Denver, Colorado 80202  
Telephone: 222-3534

*Attorneys for Public Service  
Company of Colorado and  
Cheyenne Light, Fuel and  
Power Company*

GIRTS KRUMINS, Esq.  
P. O. Box 1149  
Montrose, Colorado 81401  
Telephone: 241-4501

*Attorney for Colorado-Ute Electric  
Association, Inc.*

MOSES, WITTEMYER & HARRISON, P.C.  
250 Arapahoe Street  
Boulder, Colorado 80302  
Telephone: 443-8782

*Attorneys for Platte River Power  
Authority*

RIVES, BONYHADI & DRUMMOND  
1400 Public Service Building  
Portland, Oregon 97204  
Telephone: (503) 224-3920

*Attorneys for Pacific Power &  
Light Company*

Addresses of Petitioners:

Public Service Company of Colorado  
P. O. Box 840  
Denver, Colorado 80201

Colorado-Ute Electric Association, Inc.  
P. O. Box 1149  
Montrose, Colorado 81401

Platte River Power Authority  
3030 South College Avenue  
Fort Collins, Colorado 80521

Cheyenne Light, Fuel and Power Company  
P. O. Box 1409  
Cheyenne, Wyoming 82001

Pacific Power & Light Company  
Public Service Building  
Portland, Oregon 97204

[Certificate of Service and Exhibit A omitted in printing]

16a

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

No. 74-1869

[Filed December 23, 1974]

UTAH POWER & LIGHT COMPANY,  
*Petitioner,*

vs.

ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

**Petition for Review**

Utah Power & Light Company hereby petitions the Court for review of the Order of the Environmental Protection Agency entitled "Part 52—Approval and Promulgation of Implementation Plans, Prevention of Significant Air Quality Deterioration," published at 39 Federal Register 42510 *et seq.* on December 5, 1974.

Respectfully submitted,

/s/ GERRY LEVENBERG  
Gerry Levenberg  
PRATHER LEVENBERG SEEGER  
DOOLITTLE FARMER & EWING  
1101 Sixteenth Street, N.W.  
Washington, D.C. 20036

/s/ SIDNEY G. BAUCOM  
Sidney G. Baucom

/s/ VERL R. TOPHAM  
Verl R. Topham  
P.O. Box 899  
Salt Lake City, Utah 84110  
*Attorneys for Petitioner*

[Certificate of Service omitted in printing]

17a

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 74-3460

[Filed December 26, 1974]

MONTANA POWER COMPANY,  
PACIFIC POWER & LIGHT COMPANY,  
PORTLAND GENERAL ELECTRIC COMPANY,  
PUGET SOUND POWER & LIGHT COMPANY, and  
WASHINGTON WATER POWER COMPANY,  
*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

**Joint Petition for Review**

Pursuant to Section 307(b)(1) of the Clean Air Act, as amended, 84 Stat. 1708, 42 U.S.C. § 1857h-5(b)(1), and Rule 15, Federal Rules of Appellate Procedure, petitioners, Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, Puget Sound Power & Light Company, and Washington Water Power Company, hereby petition the Court for review of the regulations promulgated by the respondent, United States Environmental Protection Agency, on November 27, 1974, amending 40 C.F.R. §§ 52.01 and 52.21, and published in 39 Fed. Reg. 42514-42517 (December 5, 1974). These regulations, of which review is sought, relate to the approvals and promulgations of state implementation plans under the Clean Air Act, as amended, with specific reference to the significant deterioration of air quality.



18a

FRANCIS M. SHEA  
RICHARD T. CONWAY  
DAVID BOOTH BEERS  
JAMES R. BIEKE

SHEA AND GARDNER  
734 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 737-1255

*Attorneys for Petitioners*

*Of Counsel:*

SHEA AND GARDNER  
734 Fifteenth Street, N.W.  
Washington, D.C. 20005

December 26, 1974

[Certificate of Service omitted in printing]

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UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

No. 74-2055

[Filed December 27, 1974]

INDIANA-KENTUCKY ELECTRIC CORPORATION,  
INDIANA & MICHIGAN ELECTRIC COMPANY,  
INDIANA STATEWIDE RURAL ELECTRIC COOPERATIVE, INC.,  
INDIANAPOLIS POWER & LIGHT COMPANY,  
NORTHERN INDIANA PUBLIC SERVICE COMPANY,  
PUBLIC SERVICE COMPANY OF INDIANA, INC., and  
SOUTHERN INDIANA GAS AND ELECTRIC COMPANY,  
*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

**Petition for Review**

Indiana-Kentucky Electric Corporation, which generates electric power primary for the Portsmouth, Ohio facility of the United States Atomic Energy Commission, Indiana & Michigan Electric Company, which generates electric power for the residents of Indiana and Michigan, Indiana Statewide Rural Electric Corporation, Inc., which generates electric power for residents of Indiana, Indianapolis Power & Light Company, which generates electric power for residents of Indiana, Northern Indiana Public Service Company, which generates electric power for residents of Indiana, Public Service Company of Indiana, Inc., which generates electric power for residents of Indiana and Southern Indiana Gas and Electric Company, which generates electric power for residents of Indiana hereby petition the Court for review of the Order of the United States Environmental Protection Agency entitled "Air

Quality Implementation Plans, Prevention of Significant Air Quality Deterioration" published in the Federal Register on Thursday, December 5, 1974, at 39 Fed. Reg. 42509-42517, inclusive.

/s/ JERRY P. BELKNAP  
Jerry P. Belknap

/s/ JON D. NOLAND  
Jon D. Noland

/s/ BRYAN G. TABLER  
Bryan G. Tabler  
1313 Merchants Bank Building  
Indianapolis, Indiana 46204  
Telephone: (317) 638-1313

*Attorneys for Petitioner*

LIVINGSTONE, DILDINE, HAYNIE & YODER  
425 Lincoln Bank Tower  
Fort Wayne, Indiana 46802  
Telephone: (219) 742-8341

PARR, RICHEY, OBREMSKEY, PEDERSEN & MORTON  
Union Federal Savings and Loan Building  
Lebanon, Indiana 46052  
Telephone: (317) 482-0110

SCHROER, EICHHORN & MORROW  
5243 Hohman Avenue  
Hammond, Indiana 46320  
Telephone: (219) 931-0560

BAMBERGER, FOREMAN, OSWALD AND HAHN  
708 Hulman Building  
Evansville, Indiana 47708  
Telephone: (812) 425-1591

MARCUS E. WOODS  
JOHN R. HODOWAL  
ARNOLD A. GORDUS  
P.O. Box 1595B  
Indianapolis, Indiana 46206  
Telephone: (317) 638-1313

BARNES, HICKAM, PANTZER & BOYD  
1313 Merchants Bank Building  
Indianapolis, Indiana 46204  
Telephone: (317) 638-1313

*Of Counsel*

[Certificate of Service omitted in printing]

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 74-2358

[Filed December 27, 1974]

BUCKEYE POWER, INC., ET AL.,  
*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY,  
RUSSELL E. TRAIN, Administrator of the  
Environmental Protection Agency,  
*Respondent.*

**Petition for Review**

Buckeye Power, Inc., The Cincinnati Gas & Electric Company, The Cleveland Electric Illuminating Company and Columbus and Southern Ohio Electric Company, all owning and operating electric generating plants in Ohio for the supply of electric energy to residents of Ohio, and Ohio Valley Electric Corporation, which generates electric power in Ohio primarily for the Portsmouth, Ohio facility of the United States Atomic Energy Commission, all of which above referred plants are subject to the provisions of the Ohio Implementation Plan described below, hereby petition the Court for a review, pursuant to Title 42 United States Code, Section 1857h-5(b) and (c), of the Order of the Environmental Protection Agency, acting through Russell Train, Administrator, dated November 27, 1974, as published in the Federal Register, Volume 39, No. 235 at 42514 et seq., on Thursday, December 5, 1974, titled 40 Code of Federal Regulations, Chapter I, Subchapter A, Part 52, "Approval and Promulgation of Implementation Plans," as said Order relates to the Plan of the State of Ohio entitled "Implementation Plan for the

Control of Suspended Particulates, Sulfur Dioxide, Carbon Monoxide, Hydrocarbons, Nitrogen Dioxide, and Photochemical Oxidants in the State of Ohio," together with all supplements.

/s/ LESLIE HENRY  
Leslie Henry

/s/ WILSON W. SNYDER  
Wilson W. Snyder

*Attorneys for All Petitioners*  
12th Floor, Edison Plaza  
300 Madison Avenue  
Toledo, Ohio 43604  
Telephone: (419) 255-8220

*Of Counsel:*

FULLED, HENRY, HODGE & SNYDER  
12th Floor, Edison Plaza  
300 Madison Avenue  
Toledo, Ohio 43604

[Certificate of Service omitted in printing]

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

No. 74-4234

[Filed December 27, 1974]

ALABAMA POWER COMPANY,  
GEORGIA POWER COMPANY,  
GULF POWER COMPANY, and  
MISSISSIPPI POWER COMPANY,  
*Petitioners,*

v.

RUSSELL E. TRAIN, as Administrator, Environmental  
Protection Agency, 401 M Street, S.W.,  
Washington, D. C. 20560  
*Respondent.*

**Joint Petition for Review**

Pursuant to 42 U.S.C. § 1857h-5(b)(1) (1970) and Rule 15, Federal Rules of Appellate Procedure, Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company hereby petition this Court to review the Order of the Administrator of the United States Environmental Protection Agency, issued on November 27, 1974, promulgating regulations relating to approvals of state implementation plans and for the prevention of significant air quality deterioration. These regulations were issued pursuant to the Clean Air Act of 1970, 42 U.S.C. § 1857 *et seq.* and appear at 40 C.F.R. Part 52.

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Respectfully submitted,

/s/ S. EASON BALCH  
S. Eason Balch

/s/ ROBERT A. BUETTNER  
Robert A. Buettner

/s/ JOHN P. SCOTT, JR.  
John P. Scott, Jr.

BALCH, BINGHAM, BAKER, HAWTHORNE,  
WILLIAMS & WARD  
P.O. Box 306  
Birmingham, Alabama 35201  
Phone: (205) 323-8391

*Attorneys for Petitioners*

Dated: December 27, 1974

[Certificate of Service omitted in printing]



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 74-3501

[Filed December 30, 1974]

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Arizona Agricultural Improvement District; ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation; TUCSON GAS & ELECTRIC COMPANY, an Arizona corporation; NEVADA POWER Co., a Nevada corporation; PACIFIC POWER & LIGHT COMPANY, a Maine corporation, doing business as a public utility corporation in Idaho, California, Oregon, Washington, Montana and Wyoming; ARIZONA ELECTRIC POWER CO-OP, INC., an Arizona corporation; SAN DIEGO GAS & ELECTRIC Co., a California corporation, doing business as a public utility in California; and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation,

*Petitioners,*

vs.

ENVIRONMENTAL PROTECTION AGENCY and RUSSELL E. TRAIN,  
Administrator, Environmental Protection Agency,  
*Respondent.*

**Joint Petition for Review**

Pursuant to 42 U.S.C. § 1857h-5(b)(1)(1970) and Rule 15, Federal Rules of Appellate Procedure for the United States Court of Appeals, petitioners seek review of the regulations regarding significant deterioration of air quality which were promulgated by Respondent ENVIRONMENTAL PROTECTION AGENCY on November 27, 1974, and published in the Code of Federal Regulations on December 5, 1974, Vol. 39, No. 235, pgs. 42510, *et seq.*, including review of the regulations promulgated by Respondent

amending Subpart A, Part 52, Chapter I, Title 40 of the Code of Federal Regulations, on the grounds that each of them will be profoundly and adversely affected by said promulgation and that it is the promulgation of an implementation plan subject to review by this Court.

Petitioners are all suppliers of electrical energy to portions of the Southwest United States and include SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Arizona Agricultural Improvement District; ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation; TUCSON GAS AND ELECTRIC Co., a corporation; NEVADA POWER Co., a Nevada corporation; PACIFIC POWER & LIGHT COMPANY, a Maine corporation, doing business as a public utility corporation in Idaho, California, Oregon, Utah, Montana and Wyoming; SAN DIEGO GAS & ELECTRIC Co., a California corporation, doing business as a public utility in California; ARIZONA ELECTRIC POWER CO-OP, INC., an Arizona corporation, and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.

JENNINGS, STROUSS & SALMON

/s/ JON L. KYL  
Jon L. Kyl  
111 West Monroe  
Phoenix, AZ 85003  
Rex E. Lee  
2840 Iroquois Drive  
Provo, UT 54601

SNELL & WILMER

/s/ BRUCE NORTON  
Bruce Norton  
3100 Valley Center  
Phoenix, AZ 85073  
*Attorneys for Petitioners*

[Certificate of Service omitted in printing]



UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 75-1001

[Filed January 2, 1975]

AMERICAN PETROLEUM INSTITUTE,  
THE STANDARD OIL COMPANY (OHIO),  
ATLANTIC RICHFIELD COMPANY,  
CONTINENTAL OIL COMPANY,  
EXXON CORPORATION,  
GULF OIL CORPORATION,  
MOBIL OIL CORPORATION,  
SHELL OIL COMPANY,  
TEXACO INC., and  
UNION OIL COMPANY OF CALIFORNIA,  
*Petitioners,*

vs.

ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

**Petition for Review of Regulations Promulgated by the  
Environmental Protection Agency**

Pursuant to 42 U.S.C. § 1857h-5(b)(1) (1970), American Petroleum Institute, The Standard Oil Company (Ohio), Atlantic Richfield Company, Continental Oil Company, Exxon Corporation, Gulf Oil Corporation, Mobil Oil Corporation, Shell Oil Company, Texaco Inc., and Union Oil Company of California petition this Court for review of the regulations promulgated by the Environmental Protection Agency, amending Subpart A, Sections 52.01 and 52.21 of the regulations of the Environmental Protection Agency relating to the approval and promulgation of State implementation plans under the Clean Air Act, such amending regulations being published in the Federal Register of December 5, 1974 at 39 Fed. Reg. 42510 *et seq.*

Petitioners, except for the American Petroleum Institute of which all other petitioners are members, are petroleum companies either having their principal operating office, refineries or other facilities in Ohio, Michigan, Tennessee or Kentucky.

AMERICAN PETROLEUM INSTITUTE  
THE STANDARD OIL COMPANY (OHIO)  
ATLANTIC RICHFIELD COMPANY  
CONTINENTAL OIL COMPANY  
EXXON CORPORATION  
GULF OIL CORPORATION  
MOBIL OIL CORPORATION  
SHELL OIL COMPANY  
TEXACO INC.  
UNION OIL COMPANY OF CALIFORNIA

/s/ ROBERT G. STACHLER  
TAFT, STETTINIUS & HOLLISTER  
600 Dixie Terminal Building  
Cincinnati, Ohio 45202  
(513) 381-2838

CHARLES D. LINDBERG  
TAFT, STETTINIUS & HOLLISTER  
600 Dixie Terminal Building  
Cincinnati, Ohio 45202  
(513) 381-2838

JOHN J. ADAMS  
ALISON K. SCHULER  
HUNTON, WILLIAMS, GAY & GIBSON  
1730 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
(202) 833-1680

30a

JOSEPH C. CARTER, JR.  
GEORGE C. FREEMAN, JR.  
DAVID F. PETERS  
TURNER T. SMITH, JR.  
HUNTON, WILLIAMS, GAY & GIBSON  
700 East Main Street  
Richmond, Virginia 23219  
(804) 649-3661

[Certificate of Service omitted in printing]

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UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

No. 75-1006

[Filed January 3, 1975]

PACIFIC COAL GASIFICATION COMPANY and  
TRANSWESTERN COAL GASIFICATION COMPANY,  
*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

**Petition for Review**

Pursuant to the provisions of § 1857h-5(b)(1) of the Clean Air Act, 42 U.S.C. § 1857, and § 702 of the Administrative Procedure Act, 5 U.S.C. § 500 *et seq.*, Pacific Coal Gasification Company and Transwestern Coal Gasification Company hereby petition the court for review of the Order and Regulations of the Environmental Protection Agency entitled "Air Programs, Approval and Promulgation of Implementation Plans, Prevention of Significant Air Quality Deterioration," and published in 39 Federal Register, No. 235, December 5, 1974, at pages 42510 to 42517. Pacific Coal Gasification Company and Transwestern Coal Gasification Company are adversely affected and aggrieved by this action of the Environmental Protection Agency.

JAMES W. MCCARTNEY  
NORMAN D. RADFORD, JR.  
VINSON, ELKINS, SEARLS, CONNALLY & SMITH

/s/ NORMAN D. RADFORD, JR.  
Norman D. Radford, Jr.  
2100 First City National Bank Building  
Houston, Texas 77002

*Attorneys for Petitioners*

[Certificate of Service omitted in printing]

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

No. 75-1007

[Filed January 6, 1975]

UTAH INTERNATIONAL INC., a corporation,  
*Petitioner,*

vs.

ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent.*

**Petition for Review**

Utah International Inc., a corporation, hereby petitions the Court for review of the order and regulations promulgated by the Environmental Protection Agency, acting by and through its Administrator, dated November 27, 1974 and effective January 6, 1975 and entitled "Approval and Promulgation of Implementation Plans-Prevention of Significant Air Quality Deterioration", published in 39 Fed. Reg. No. 235, December 5, 1974, at pages 42510 et seq., insofar as such order and regulations apply to the State of New Mexico implementation plan and lands lying within the exterior boundaries of the State of New Mexico.

Utah International Inc., the petitioner, is lessee under a coal mining lease from the Navajo Tribe of Indians, holding a valuable coal reserve on the Navajo Reservation within the exterior boundaries of the State of New Mexico. The coal reserve is committed by contracts for the fuel supply for the adjacent Four Corners Powerplant and as the basis for the future establishment of a coal gasification complex to be constructed adjacent to the leasehold. Petitioner also has contractual obligations for it to mine coal for Western Coal Company for the fuel supply for existing and future units of the San Juan Generating Station.

Said existing and prospective sources are located within the State of New Mexico and have and would have emissions affecting the air quality and deterioration increments which are the subject of respondent's order and regulations sought to be reviewed; and certain of the future units at the gasification complex and at the San Juan Generating Station would, under the regulations sought to be reviewed, be subject to new source review and emission limitation as a condition precedent to construction. The denial of permission to construct new units at the gasification complex or at the San Juan Generating Station will immediately harm Utah International Inc.'s coal sales and revenues from mining operations and to the extent that said order and regulations may force any curtailment of production at the existing or future sources, said order and regulations would affect adversely the levels of petitioner's coal sales and mining operations. Petitioner has a personal stake and interest in the order and regulations sought to be reviewed, and its interest sought to be protected is within the zone of interests protected by the Clean Air Act Amendments of 1970 and the constitutional guarantees in question. Congress has authorized judicial review by § 307(b)(1) of the Clean Air Act (42 U.S.C. § 1857h-5(b)(1)) and 5 U.S.C. §§ 702 and 704.

/s/ RICHARD N. CARPENTER  
Richard N. Carpenter  
BIGBEE, BYRD, CARPENTER & CROUT  
Post Office Box 669  
Santa Fe, New Mexico 87501



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C. C. DIETRICH  
550 California Street  
San Francisco, California 94104  
*Attorneys for Petitioner*

[Certificate of Service omitted in printing]

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-2063

[Filed December 27, 1974]

SIERRA CLUB,  
*Petitioner,*  
vs.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,  
*Respondents.*

**Motion and Application of Western Energy Supply and  
Transmission Associates and Arizona Public Service Company  
to Intervene as Respondents**

WESTERN ENERGY SUPPLY AND TRANSMISSION ASSOCIATES (hereinafter "WEST") and ARIZONA PUBLIC SERVICE COMPANY (hereinafter "Arizona Public Service") move to intervene as respondents in this action under Rule 24, Federal Rules of Civil Procedure.

The facts and authorities upon which this Motion is based are contained in the Memorandum of Points and Authorities attached hereto and incorporated herein by this reference. [Memorandum of Points and Authorities omitted in printing.]

DATED this 26th day of December, 1974.

SNELL & WILMER

/s/ BRUCE NORTON  
Bruce Norton  
3100 Valley Center  
Phoenix, Arizona 85073

JENNINGS, STROUSS & SALMON

/s/ JON L. KYL  
Jon L. Kyl  
REX E. LEE  
111 West Monroe  
Phoenix, Arizona

CHAPMAN, DUFF & LENZINI

/s/ HENRY E. BROWN  
Henry E. Brown\*  
Suite 303  
1709 New York Avenue, N.W.  
Washington, D.C. 20006  
Telephone: (202) 872-8311

*Attorneys for Intervenors  
Western Energy Supply and  
Transmission Associates and  
Arizona Public Service Company*

\* Member of Bar of United States Court of Appeals for  
the District of Columbia Circuit.

[Certificate of Service omitted in printing]

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT  
September Term, 1974

No. 74-2063

[Filed January 7, 1975]

SIERRA CLUB, 1050 Mills Tower, 220 Bush Street,  
San Francisco, California 94104  
*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY and  
RUSSELL E. TRAIN, Administrator,  
Environmental Protection Agency,  
*Respondents.*

BEFORE: Bazelon, *Chief Judge*

**Order**

On considerations of the motions of Western Energy Supply and Transmission Associates ("WEST") and Arizona Public Service Company ("Arizona Public Service"), The Dayton Power and Light Company, Kentucky Power Company, Kentucky Utilities Company, Ohio Edison Company, and Ohio Power Company, Utah Power & Light Company, and Edison Electric Institute ("EEI") for leave to intervene herein, it is

ORDERED that Western Energy Supply and Transmission Associates ("WEST") and Arizona Public Service Company ("Arizona Public Service"), The Dayton Power and Light Company, Kentucky Power Company, Kentucky Utilities Company, Ohio Edison Company, and Ohio Power Company, Utah Power & Light Company, and Edison Electric Institute ("EEI") are granted leave to intervene in the above case.



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Counsel for the aforesaid intervenors are encouraged to file joint briefs wherever practicable and may participate in oral argument only to the extent allowable under Rule 12 of the General Rules of this Court.

FOR THE COURT:

HUGH E. KLINE, *Clerk*

/s/ DANIEL M. CATHEY  
Daniel M. Cathey  
Deputy Clerk

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 74-2063

SIERRA CLUB, *Petitioner*

v.

ENVIRONMENTAL PROTECTION AGENCY ET AL.,  
*Respondents*  
THE DAYTON POWER & LIGHT CO. ET AL., *Intervenors*

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No. 74-2079

SIERRA CLUB ET AL., *Petitioners*

v.

ENVIRONMENTAL PROTECTION AGENCY ET AL.,  
*Respondents*

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No. 75-1368

PUBLIC SERVICE COMPANY OF COLORADO ET AL.,  
*Petitioners*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent*  
SIERRA CLUB ET AL., *Intervenors*

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No. 75-1369

UTAH POWER & LIGHT COMPANY, *Petitioner*

v.

ENVIRONMENTAL PROTECTION AGENCY, *Respondent*  
SIERRA CLUB ET AL., *Intervenors*

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No. 75-1370

STATE OF NEW MEXICO EX REL. NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT AGENCY, *Petitioner*

v.

ENVIRONMENTAL PROTECTION AGENCY, *Respondent*  
SIERRA CLUB ET AL., *Intervenors*

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No. 75-1371

PACIFIC COAL GASIFICATION COMPANY ET AL., *Petitioners*

v.

ENVIRONMENTAL PROTECTION AGENCY, *Respondent*  
SIERRA CLUB ET AL., *Intervenors*

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No. 75-1372

UTAH INTERNATIONAL, INC., *Petitioner*

v.

ENVIRONMENTAL PROTECTION AGENCY, *Respondent*  
SIERRA CLUB ET AL., *Intervenors*

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No. 75-1575

INDIANA-KENTUCKY ELECTRIC CORPORATION ET AL.,  
*Petitioners*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent*  
SIERRA CLUB ET AL., *Intervenors*

---

No. 75-1663

THE DAYTON POWER & LIGHT COMPANY ET AL.,  
*Petitioners*

v.

ENVIRONMENTAL PROTECTION AGENCY, *Respondent*  
SIERRA CLUB ET AL., *Intervenors*

---

No. 75-1664

BUCKEYE POWER, INC. ET AL., *Petitioners*

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,  
*Respondents*  
SIERRA CLUB ET AL., *Intervenors*

---

No. 75-1665

AMERICAN PETROLEUM INSTITUTE ET AL., *Petitioners*

v.

ENVIRONMENTAL PROTECTION AGENCY, *Respondent*  
SIERRA CLUB ET AL., *Intervenors*

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No. 75-1666

ALABAMA POWER COMPANY ET AL., *Petitioners*

v.

ENVIRONMENTAL PROTECTION AGENCY, *Respondent*  
SIERRA CLUB ET AL., *Intervenors*

No. 75-1763

MONTANA POWER COMPANY ET AL., *Petitioners*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondent*  
SIERRA CLUB ET AL., *Intervenors*

No. 75-1764

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT  
AND POWER DISTRICT ET AL., *Petitioners*

v.

ENVIRONMENTAL PROTECTION AGENCY ET AL.,  
*Respondents*  
SIERRA CLUB ET AL., *Intervenors*Petitions for Review of Regulations Promulgated by  
the Environmental Protection Agency

Argued June 9, 1976

Decided August 2, 1976

Before WRIGHT, ROBINSON, and WILKEY, *Circuit Judges*.Opinion for the court filed by *Circuit Judge Wright*.WRIGHT, *Circuit Judge*:

## I. INTRODUCTION

One of the primary purposes of the Clean Air Act, 42 U.S.C. § 1857 *et seq.* (1970), is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population \* \* \*." Section 101(b)(1), 42 U.S.C. § 1857(b)(1). Pursuant to the court order in *Sierra Club v. Ruckelshaus*, 344 F.Supp. 253 (D. D.C. 1972), *aff'd per curiam*, 4 ERC 1815 (D.C. Cir. 1972), *aff'd by an equally divided Court, sub nom. Fri v. Sierra Club*, 412 U.S. 541 (1973), the Administrator of the Environmental Protection Agency (EPA) promulgated regulations designed to prevent "significant deterioration" of air quality in those areas which have air that already is cleaner than the national ambient air quality standards.<sup>1</sup> The regulations

<sup>1</sup> The twin objectives of the Clean Air Act are to improve air quality where pollution levels do not meet national minimum standards, and to protect the quality of air that already, as in this case, is cleaner than national standards. See Part V-A of this opinion *infra*. Accomplishment of those objectives is to be a joint enterprise of the federal government and the states, the former providing informed guidance to the implementation efforts of the latter. See §§ 101(a)(3), (4) of the Act, 42 U.S.C. §§ 1857(a)(3), (4).

Section 108 of the Act, 42 U.S.C. § 1857c-3, required the Administrator of EPA to publish a list of air pollutants which have "an adverse effect on public health or welfare." The Administrator was then to promulgate national primary and secondary ambient air quality standards for those specified pollutants. National *primary* air quality standards are those "the attainment and maintenance of which \* \* \* are requisite to protect the public health"; national *secondary* standards are those "requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air." Section 109,

[continued]



employ a classification scheme under which these "clean air" regions may be designated Class I, II, or III. All

42 U.S.C. § 1857e-4. The Administrator has promulgated national primary and secondary air quality standards for six pollutants: sulfur dioxide, particulate matter, carbon monoxide, photochemical oxidants, hydrocarbons, and nitrogen dioxide. 40 C.F.R. §§ 50.4—50.11 (1975).

The states are charged with the duty to develop implementation plans designed to achieve the level of air quality prescribed by the national primary and secondary standards:

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

Section 107, 42 U.S.C. § 1857e-2. The plans are submitted to the Administrator for approval under the provisions of § 110 of the Act, 42 U.S.C. § 1857e-5 (1970), *as amended* (Supp. IV 1974). A proposed implementation plan must satisfy the requirements of § 110(a)(2)(A)-(II), 42 U.S.C. § 1857e-5(a)(2)(A)-(H), which requirements include attainment of the national primary standards within three years after approval of the plan, and attainment of the secondary standards within a "reasonable time." Section 110(a)(2)(A), 42 U.S.C. § 1857e-5(a)(2)(A).

Section 110 also provides that the Administrator is promptly to prepare and publish his own regulations for a state if (a) it fails to submit a plan, (b) the plan "is determined by the Administrator not to be in accordance with the requirements of this section," or (c) the state fails to revise its plan pursuant to a provision required by § 110(a)(2)(H). Section 110(c)(1), 42 U.S.C. § 1857e-5(c)(1) (Supp. IV 1974). Subsection (c)(1) of § 110 also contains a conditional hearing requirement for these "replacement" implementation plans: "If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation." Subsection (a)(2)(H) requires that an implementation plan provide for revision (i) to take account of changes in either technology or the national standards and (ii) whenever the Administrator determines that the plan is inadequate to achieve the primary or secondary standards.

The basic structure described above is supplemented by § 111 of

such areas initially are designated Class II, under which specified increments in sulfur dioxide and particulate matter pollution are considered "insignificant." A state, Indian territory, or federal land may be redesignated after hearing and by application to EPA. Designation as Class I implies a region of very clean air, in which relatively small increments in air pollution would be considered significant deterioration; Class III areas are those in which deterioration of air quality to the national ambient air quality standards would be considered insignificant.

The court has heard the regulations attacked from several perspectives. Petitioner Sierra Club contends that the regulations fail, in a variety of ways, to prevent significant deterioration of existing clean air. The States of New Mexico, Wyoming, and California<sup>2</sup> agree in some

respects with Sierra Club, but are concerned that the regulations infringe on the general regulatory authority vested in the states by the Clean Air Act. A large number of electric power companies and industrial organizations have argued that the regulations are not authorized by the Clean Air Act, that their promulgation was procedurally defective, that the allowable increments are arbitrary and capricious, and that the regulatory structure created by the regulations is unconstitutional.

the Act, 42 U.S.C. § 1857e-6 (1970), *as amended* (Supp. IV 1974), which provides for promulgation of "standards of performance" for emission limitations of significant new sources of pollution, by categories of sources. The standards must reflect "the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated."

<sup>2</sup> The three named states are joined by Maine, Alabama, Colorado, Kansas, Minnesota, South Dakota, and Florida.



We conclude that the Administrator's action is rationally based and has not been shown to be either without his authority or unconstitutional. We therefore do not disturb the regulations as promulgated.

## II. LITIGATION HISTORY

Suit was filed in May 1972 by the Sierra Club and other environmental protection groups for a declaratory judgment that the Clean Air Act prohibited approval of state implementation plans which permitted significant deterioration of air cleaner than the national secondary standards, and for injunctive relief to prevent the Administrator from approving those portions of state implementation plans which would permit significant deterioration. District Judge John H. Pratt granted plaintiffs' motion for a preliminary injunction and declared invalid an EPA regulation<sup>3</sup> which had required only that state implementation plans "be adequate to prevent . . . ambient pollution levels from exceeding . . . [the applicable] secondary standard." *Sierra Club v. Ruckelshaus*, 344 F.Supp. 253 (D. D.C. 1972). The Administrator was enjoined from approving any state plan "unless he approves the state plan subject to subsequent review by him to insure that it does not permit significant deterioration of existing air quality in any portion of any state where the existing air quality is better than one or more of the secondary standards promulgated by the Administrator."<sup>4</sup>

As is apparent from the provisions of the Clean Air Act outlined above,<sup>5</sup> prohibition of significant deterioration of air cleaner than the national standards is not an

<sup>3</sup> 40 C.F.R. § 51.12(b) (1975).

<sup>4</sup> *Sierra Club v. Ruckelshaus*, Civil Action No. 1031-72 (D. D.C. May 30, 1972), JA Vol. IV at 1487.

<sup>5</sup> See note 1 *supra*.

express requirement of the Act. Judge Pratt based his decision, rather, on the "protect and enhance" language of Section 101(b)(1) of the Act and on the legislative history of both the Clean Air Act of 1970 and the Air Quality Act of 1967.<sup>6</sup> The decision was affirmed *per curiam* by this court, 4 E.R.C. 1815 (1972), and was affirmed by an equally divided Supreme Court, *sub nom. Fri v. Sierra Club*, 412 U.S. 541 (1973).

Pursuant to that order, the Administrator reviewed and disapproved all state plans insofar as they failed to provide for prevention of significant deterioration. 37 Fed. Reg. 22836 (November 9, 1971). Four alternative sets of regulations were proposed for public comment, in an effort to determine what meaning to give the concept of "significant deterioration."<sup>7</sup> Final regulations were pub-

<sup>6</sup> The legislative history is discussed at notes 32-38 *infra*.

<sup>7</sup> 38 Fed. Reg. 18986 (July 16, 1973). In proposing alternative solutions, EPA posed for public debate the problem of how significant deterioration was to be defined:

The basis for preventing significant deterioration . . . lies in a desire to protect aesthetic, scenic, and recreational values, particularly in rural areas, and in concern that some air pollutants may have adverse effects that have not been documented in such a way as to permit their consideration in the formation of national ambient air quality scientific data on the kind and extent of adverse effects of air pollution levels below the secondary standards, significant deterioration must necessarily be defined without a direct quantitative relationship to specific adverse effects on public health and welfare.

. . . . .

The relative significance of air quality versus economic growth may be a variable dependent upon regional conditions. For example, relatively minor deterioration of the aesthetic quality of the air may be very significant in a recreational area in which great pride (and economic development) is derived from the "clean air." Conversely, in areas with severe

[continued]

lished December 5, 1974, 39 Fed. Reg. 42509, and were amended slightly on January 16, 1975 (40 Fed. Reg. 2802), June 12, 1975 (40 Fed. Reg. 25004), and September 10, 1975 (40 Fed. Reg. 42011).

### III. THE REGULATIONS

In promulgating final regulations<sup>8</sup> EPA was concerned primarily with the meaning of "significant deterioration." As it stated in the discussion preceding the new regulations:

Most of the comments implicitly recognized that there is a need to develop resources in presently clean areas of the country, and that significant deterioration regulations should not preclude all growth, but should ensure that growth occurs in an environmentally acceptable manner. However, there are some areas, such as national parks, where any deterioration would probably be viewed as significant. A single nationwide deterioration increment would not be able to accommodate these two situations.

39 Fed. Reg. at 42520. The solution was to prescribe, for those areas with air cleaner than the national standards, three classes of allowable total increments above the levels of particulate matter and sulfur dioxide pollution as of

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unemployment and little recreational value, the same level of deterioration might very well be considered "insignificant" in comparison to the favorable impact of new industrial growth with resultant employment and other economic opportunities. Accordingly, the definition of what constitutes significant deterioration must be accomplished in a manner to minimize the imposition of inequitable regulations on different segments of the Nation.

*Id.* at 18987, 18988.

<sup>8</sup> "Prevention of Significant Air Quality Deterioration," 39 Fed. Reg. 42510 (Dec. 5, 1974).

January 1, 1975, with the intention that each area could determine which class would prevent significant deterioration of its air in light of the area's air quality and social and economic needs and objectives:

Class I applie[s] to areas in which practically any change in air quality would be considered significant; Class II applie[s] to areas in which deterioration normally accompanying moderate well-controlled growth would be considered insignificant; and Class III applie[s] to those areas in which deterioration up to the national standards would be considered insignificant.

\* \* \*

Since the consideration of "air quality factors" alone essentially leads to an arbitrary definition of what is "significant," this term only has meaning when the economic and social implications are analyzed and considered. Therefore, the Administrator believes that it is most important to recognize and consider these implications, since the consideration of air quality factors alone provides no basis for selecting one deterioration increment over another.

*Id.* The regulations, 40 C.F.R. §§ 52.01(d), (f), and 52.21 (1975), were promulgated as amendments to the disapproved state implementation plans.<sup>9</sup>

All areas initially are designated Class II,<sup>10</sup> and may be redesignated by proposal of state, federal land manager,

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<sup>9</sup> Part 52 of 40 C.F.R. "sets forth the Administrator's approval and disapproval of State plans and the Administrator's promulgation of such plans or portions thereof." 40 C.F.R. § 52.02(a) (1975). Each state implementation plan has been amended to incorporate by reference the new regulations. *See, e.g.*, 40 C.F.R. §§ 52.96 (Alaska), 52.144 (Arizona), 52.181 (Arkansas).

<sup>10</sup> 40 C.F.R. § 52.21(c)(3)(i) (1975).



or Indian governing body where the state has not assumed jurisdiction over Indian lands.<sup>11</sup> Federal land may be designated only to a more restrictive classification than that provided by the state(s) in which it is located.<sup>12</sup>

A state may redesignate if a hearing is held after notice to states, federal land managers, and Indian governing bodies that may be affected,<sup>13</sup> and if the proposed redesignation is based on the record of the hearing,

which must reflect the basis for the proposed redesignation, including consideration of (1) growth anticipated in the area, (2) the social, environmental, and economic effects of such redesignation upon the areas being proposed for redesignation and upon other areas and States, and (3) any impacts of such proposed redesignation upon regional or national interests.<sup>14</sup>

A redesignation is to be approved if the state has complied with the listed requirements, has not "arbitrarily and capriciously disregarded" the considerations listed in the passage quoted above, and has undertaken the new source review requirements of Sections 52.21(d) and (e), discussed below.<sup>15</sup> 40 C.F.R. § 52.21(c)(3)(vi)(a) (1975).<sup>16</sup>

<sup>11</sup> 40 C.F.R. §§ 52.21(c)(3)(ii), (iii), (iv), (v) (1975).

<sup>12</sup> 40 C.F.R. § 52.21(c)(iv) (1975).

<sup>13</sup> 40 C.F.R. §§ 52.21(c)(3)(ii)(a)-(c) (1975).

<sup>14</sup> 40 C.F.R. § 52.21(c)(3)(ii)(d) (1975).

<sup>15</sup> See discussion at notes 20-23 *infra*.

<sup>16</sup> In the event of a protest by a state or Indian governing body to a redesignation proposed by another state, federal land manager, or Indian governing body, the Administrator may approve the proposal "only if he determines that in his judgment the redesignation appropriately balances considerations of growth anticipated in the area proposed to be redesignated; the social, environmental and economic effects of such redesignation upon the area being redesignated and upon other areas and States; and any impacts upon regional or national interests." 40 C.F.R. § 52.21(c)(3)(vi)(e) (1975).

Federal land managers and Indian governing bodies are subject to requirements parallel to those imposed on the states, with the added requirement that they consult with the state(s) in which they are located.<sup>17</sup>

If an area is designated as Class I or II, the allowable incremental pollution is measured from January 1, 1975.<sup>18</sup> No increments are specified for Class III; areas so designated are required to meet only the national secondary standards.<sup>19</sup>

Enforcement of the limitation on incremental pollution is accomplished partly through preconstruction review of 19 categories of stationary sources considered to be significant sources of pollution.<sup>20</sup> Permission to construct or to modify significantly one of the listed stationary sources is conditioned on a showing that the source's emissions, together with all other increases or decreases in emissions in the area since January 1, 1975, will not violate the air

nated and upon other areas and States; and any impacts upon regional or national interests." 40 C.F.R. § 52.21(c)(3)(vi)(e) (1975).

<sup>17</sup> 40 C.F.R. §§ 52.21(c)(3)(iv), (v) (1975).

<sup>18</sup> 40 C.F.R. § 52.21(c)(2)(i) (1975). The increments are prescribed in the following table, included in the cited subsection:

Pollutant	Class I (ug/m <sup>3</sup> )	Class II
Particulate matter:		
Annual geometric mean	5	10
24-hr. maximum	10	30
Sulfur dioxide:		
Annual arithmetic mean	2	15
24-hr. maximum	5	100
3-hr. maximum	25	700

<sup>19</sup> 40 C.F.R. § 52.21(c)(2)(ii) (1975).

<sup>20</sup> 40 C.F.R. § 52.21(d)(1)(i)-(xix) (1975).



quality increments applicable to *any* area.<sup>21</sup> The source also must meet an emission limit, specified by the Administrator, "which represents that level of emission reduction which would be achieved by the application of best available control technology, as defined in § 52.01(f), for particulate matter and sulfur dioxide."<sup>22</sup> Preconstruction review of new proposed sources will be conducted by the Administrator or, by delegation, by the individual states.<sup>23</sup>

Last, it should be noted that the described classification scheme is no procrustean bed to which all states are to be bound. The states retain the option of proposing an alternative method of preventing significant deterioration of air quality, thereby abandoning the regulatory framework described by the regulations under review. As EPA stated in proposing regulations:

The State plans need not be identical to the regulations proposed herein, but should be developed to accommodate more appropriately individual conditions and procedures unique to specific State and local areas. States are urged to develop and submit individual plans as revisions to State Implementation Plans as soon as possible. When individual State Implemen-

<sup>21</sup> 40 C.F.R. § 52.21(d)(2)(i) (1975), *as amended*, 40 Fed. Reg. 42011 (Sept. 10, 1975).

<sup>22</sup> 40 C.F.R. § 52.21(d)(2)(ii) (1975). "Best available control technology" is defined as equivalent to the new source performance standards promulgated under § 111 of the Clean Air Act, 42 U.S.C. § 1857c-6. *See* discussion at note 1 *supra*. If no standard of performance has been promulgated for a source, best available control technology is determined on a case-by-case basis. 40 C.F.R. § 52.01(f) (1975).

<sup>23</sup> 40 C.F.R. § 52.21(f) (1975). *See also* 40 C.F.R. § 52.21(d)(4) (1975), which provides for cooperation between the Administrator and federal land managers for review of new sources on federal land, and between the Administrator and the Secretary of the Interior as to lands over which a state has not assumed jurisdiction.

tation Plan revisions are approved as adequate to prevent significant deterioration of air quality, the applicability of the regulations proposed herein will be withdrawn for that State.

39 Fed. Reg. at 31000 (August 27, 1974).

#### IV. STANDARD OF REVIEW

It is well settled that EPA rulemaking is reviewed under Section 10 of the Administrative Procedure Act, 5 U.S.C. § 706(2) (A)-(D) (1970). *Ethyl Corp. v. EPA*, — U.S. App.D.C. —, —, — F.2d —, —, slip op. at 66-74 (No. 73-2205, decided March 19, 1976). We must determine whether the Agency's action, findings, and conclusions are invalid as procedurally defective (§ 706(2)(D)), in excess of legislative authority (§ 706(2)(C)), unconstitutional (§ 706(2)(B)), or "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (§ 706(2)(A)).

The "arbitrary and capricious" standard requires that agency action be affirmed if a rational basis exists therefore<sup>24</sup>; it is not for us to inquire into whether the decision is wise as a matter of policy, for that is left to the discretion and developed expertise of the agency.<sup>25</sup> The Supreme Court has cautioned, with respect to review under the "arbitrary and capricious" standard, that the reviewing court is limited to deciding whether there has been a "clear error of judgment" \* \* \*. Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to sub-

<sup>24</sup> *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 290 (1974).

<sup>25</sup> *National Ass'n of Food Chains, Inc. v. ICC*, — U.S. App. D.C. —, —, — F.2d —, —, slip op. at 13 (No. 75-1471, decided May 18, 1976) (*per curiam*).

stitute its judgment for that of the agency." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1972). See *Ethyl Corp. v. EPA*, *supra*, — U.S.App.D.C. at — n.74, — F.2d at — n.74, slip op. at 69 n.74.

We therefore must assure ourselves that the Agency has presented a rational basis for its decision<sup>26</sup>; that it "demonstrably has given reasoned consideration to the issues, and has reached a result which rationally flows from its conclusions."<sup>27</sup>

## V. ARGUMENT

### A. Should *Sierra Club v. Ruckelshaus* be rejected on further consideration?

The question whether the Clean Air Act should be interpreted to prohibit significant deterioration of air cleaner than the national standards is necessarily the first level of analysis. Although this issue was decided by the earlier *Sierra Club v. Ruckelshaus* litigation, it is contended by the industrial petitioners (1) that the decision was clearly wrong on the merits and should be reconsidered and (2) that the later decision in *Train v. NRDC*, 421 U.S. 60 (1975), and enactment of the Energy Supply and Environmental Coordination Act of 1974, 88 STAT. 246, are inconsistent with the prior decision in *Sierra Club v. Ruckelshaus*.

<sup>26</sup> We note that the basis of agency action must be provided by the agency; an order "cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by the Act. There must be such a responsible finding . . ." *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943); see *National Ass'n of Food Chains, Inc. v. ICC*, *supra* note 25, — U.S.App.D.C. at —, — F.2d at —, slip op. at 12-13.

<sup>27</sup> *National Ass'n of Food Chains, Inc. v. ICC*, *supra* note 25, — U.S.App.D.C. at —, — F.2d at —, slip op. at 14.

The first argument obviously would require the clearest showing that *Sierra Club v. Ruckelshaus* was incorrectly decided, since Judge Pratt's decision was affirmed by both another panel of this court and an equally divided Supreme Court. It is posited that neither the "protect and enhance" language of Section 101(b)(1) nor the legislative history of the Clean Air Act need to be read to impose a requirement of nondeterioration; petitioners then point out that, to the contrary, a 1970 amendment to the Act, Section 110(a)(2), 42 U.S.C. § 1857c-5(a)(2), states that the Administrator "shall approve" a state implementation plan which meets the criteria listed in that section, none of which implies a nondeterioration standard. The conclusion advanced by petitioners is that the judicially-created requirement of nondeterioration violates this plain language of the 1970 amendment.

When a specific provision of a total statutory scheme reasonably may be construed to be in conflict with the congressional purpose expressed in the act, our first task is to examine the act's legislative history to determine whether the specific provision is reconcilable and consistent with the intent of Congress.<sup>28</sup> We find, in the legislative history of the Clean Air Act of 1970, a clear understanding that the Act embodied a pre-existing policy of nondeterioration of air cleaner than the national standards. Inasmuch as we find no support for the proposition that the addition of Section 110(a)(2) was intended to limit that policy in any way, we reaffirm our prior holding in *Sierra Club v. Ruckelshaus*.

The "protect and enhance" language of the Clear Air Act was added by the Air Quality Act of 1967, 81 STAT.

<sup>28</sup> See *FTC v. Fred Meyer, Inc.*, 390 U.S. 341, 349 (1968): "[W]e cannot, in the absence of an unmistakable directive, construe the Act in a manner which runs counter to the broad goals which Congress intended it to effectuate."



485.<sup>29</sup> The administrative interpretation and, to a lesser degree, the legislative history of the Air Quality Act expressed a policy of nondeterioration,<sup>30</sup> and that policy appears generally to have been accepted at the time of the addition of the Clean Air Act amendments of 1970.

In the Senate hearings on the Clean Air Act amendments of 1970, the officials charged with implementation of the 1967 Act expressed their clear understanding that the "protect and enhance" language of Section 101 mandated the policy of nondeterioration. HEW Secretary Rob-

<sup>29</sup> *Air Quality Act of 1967*, S. Rep. No. 91-403, 90th Cong., 1st Sess. 40 (1967).

<sup>30</sup> *Sierra Club v. Ruckelshaus*, 344 F.Supp. 253, 255 (D. D.C. 1972); ENVIRONMENTAL LAW INSTITUTE, FEDERAL ENVIRONMENTAL LAW, 1974 at 1077-1080. The Senate committee report on the Air Quality Act emphasized that the Act would apply to all areas of the country, and quoted Senator Muskie for the proposition that it was necessary "to assure the lessening of current levels of pollution and to prevent further environmental deterioration in the future." *Air Quality Act of 1967*, *supra* note 29, at 2-3, 8.

The Act was administered by the National Air Pollution Control Administration of the Department of Health, Education and Welfare, which formalized the concept of nondeterioration in its Guidelines for the Development of Air Quality Standards and Implementation Plans, Part I, § 1.51 at 7 (1969):

"[A]n explicit purpose of the Act is 'to protect and enhance the quality of the Nation's air resources' (emphasis added). Air quality standards which, even if fully implemented, would result in significant deterioration of air quality in any substantial portion of an air quality control region clearly would conflict with this expressed purpose of the law.

See generally, *Non-Degradation—Clean Air Act and Amendments Held to Mandate a Policy Prohibiting Significant Deterioration of Air Quality in Areas of Relatively Clean Air*, 2 FORDHAM URBAN L. J. 136 (1973) (hereinafter *Clean Air Act Held to Prohibit Significant Deterioration*); *The Clean Air Act and the Concept of Non-Degradation: Sierra Club v. Ruckelshaus*, 2 ECOLOGY L. Q. 801 (1971) (hereinafter *The Concept of Non-Degradation*).

ert H. Finch testified as follows in a statement presented by Undersecretary John Veneman:

In their implementation plans, the States would have to spell out the measures to be taken to achieve and preserve national air quality standards. As I have indicated, they would have the option of designing their implementation plans to achieve or preserve higher than national quality levels, if they wished to do so.

As you know, one of the express purposes of the Clean Air Act is "to protect and enhance the quality of the Nation's air resources" \* \* \*. Accordingly, it has been and will continue to be our view that implementation plans that would permit significant deterioration of air quality in any area would be in conflict with this provision. We shall continue to expect States to maintain air of good quality where it now exists.

*Air Pollution—1970*, Hearings before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works, Part I, 132-133 (1970). Undersecretary Veneman went on to state that "[i]t will continue to be our view that implementation plans that would permit significant deterioration of air quality in any area would be in conflict with the provisions of the Act. We do not intend to condone 'backsliding.' If an area has air quality which is better than the national standards, they would be required to stay there and not pollute the air ever further, even though they may be below national standards." *Id.* at 143.

The Senate committee report gave express recognition to the concept of nondeterioration, directing that

*[i]n areas where current air pollution levels are already equal to, or better than, the air quality goals, the Secretary should not approve any implementation plan which does not provide, to the maximum ex-*



*tent practicable, for the continued maintenance of such ambient air quality.* Once such national goals are established, deterioration of air quality should not be permitted except under circumstances where there is no available alternative.

S. Rep. No. 91-1196, 91st Cong., 2d Sess. 11 (1970) (emphasis added). Quite to the contrary, however, there was no particular significance ascribed to the "shall approve" language of the section which became Section 110(a)(2). *Id.* at 11-15.

The explanation of this omission in the legislative history appears to be that the 1970 amendments were aimed at states that refused to take action to improve their air quality. The background of the 1970 amendments was described in *Train v. NRDC*, *supra*, 421 U.S. at 64:

The response of the States to these manifestations of increasing congressional concern with air pollution was disappointing. Even by 1970, state planning and implementation under the Air Quality Act of 1967 had made little progress. Congress reacted by taking a stick to the States in the form of the Clean Air Amendments of 1970 \* \* \*.

The "stick" was the group of express requirements as to the content of state implementation plans.<sup>31</sup> The "shall

<sup>31</sup> "The Committee recognized that because the proposed bill would require a great deal in a short period of time and because the brevity of the provision in existing law has lead to uneven and inadequate interpretation, the character of an implementation plan must be specified and the alternative methods of achievement listed. The Committee bill would require that a rigorous time sequence be met in the development of the implementation plan and would provide for the substitution of Secretarial authority if the State plan, or a portion thereof, is inadequate to attain the quality of ambient air established by the nationally promulgated ambient air quality standard." S. Rep. No. 91-1196, 91st Cong., 2d Sess. 12 (1970).

approve" language was addressed to the administrative problems that would be caused by a requirement that all states submit complying implementation plans within a limited time; the provisions of Section 110(a) are, more than anything else, a summary of the mandatory requirements for all state implementation plans.<sup>32</sup> We have, however, found no indication, nor have we been cited to any indication in the legislative history, that Section 110 was intended in any way to vitiate the nondeterioration mandate contained in the Senate report.<sup>33</sup>

This court has recently cautioned that a failure by Congress expressly to reject the administrative construction of an act need not, without more, indicate congressional acquiescence in the agency interpretation.<sup>34</sup> In *Chisholm v. FCC*, — U.S. App.D.C. —, — F.2d — (No. 75-

<sup>32</sup> See note 31 *supra*.

<sup>33</sup> See *The Concept of Non-Degradation*, *supra* note 30, at 819:

The legislative history does support the contention that the principle of non-degradation is implicit in the Clean Air Act. It resolves the vagueness of both the purpose clause and section 110. Although the history of the 1967 Act conveys an ambiguous picture of the legislative intent, the history of both the 1970 Amendments and the later Implementation Hearings clearly indicates that Congress confronted the complexities of air pollution control and undertook a program designed to prevent the deterioration of clean air.

<sup>34</sup> *Chisholm v. FCC*, — U.S.App.D.C. —, — F.2d —, —, slip op. at 26 (No. 75-1951, decided April 12, 1976):

We begin by noting that attributing legal significance to Congressional inaction is a dangerous business \* \* \*. The Supreme Court has said that Congressional failure to repudiate particular decisions "frequently betokens unawareness, preoccupation, or paralysis" rather than conscious choice, *Zuber v. Allen*, 396 U.S. 168, 185-86 n. 21 (1969), and "affords the most dubious foundation for drawing positive inferences," *United States v. Price*, 361 U.S. 304, 310-11 (1960) (Harlan, J.).

1951, decided April 12, 1976), the court refused to ascribe significance to congressional inaction when it appeared that Congress was "aware" of the administrative interpretation only "in a technical sense." — U.S. App.D.C. at —, — F.2d at —, slip op. at 27. We are not presented with that situation. Not only was the Agency's interpretation of the Air Quality Act of 1967 as mandating prevention of significant deterioration clearly before the Congress in 1970, but the committee reports contain express language that the principle of nondeterioration was preserved by the Clean Air Act Amendments of 1970.

This sort of express congressional recognition of the implementing agency's statutory construction can be extremely significant in interpreting legislative intent. In *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974), for instance, the Court found approval of a long-standing administrative interpretation in Congress' studied inaction:

In addition to the importance of legislative history, a court may accord great weight to the longstanding interpretation placed on a statute by an agency charged with its administration. This is especially so where Congress has re-enacted the statute without pertinent change. In these circumstances, congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.

416 U.S. at 274-275. The Court reached similar results in *Zemel v. Rusk*, 381 U.S. 1, 11 (1965) (administration of Passport Act of 1926); *C. I. R. v. Estate of Noel*, 380 U.S. 678, 682 (1965); *NLRB v. Gullett Gin Co.*, 340 U.S. 361, 365-366 (1951); *Helvering v. R.J. Reynolds Tobacco Co.*, 306 U.S. 110, 114-225 (1939); and *Norwegian Nitrogen Co. v. United States*, 288 U.S. 294, 313 (1933), among others.

In the instant case there is every indication that Congress intended in 1970 to continue a policy of prevention

of significant deterioration of air quality. In addition, we find nothing in the legislative history to indicate that Congress had any desire or intention that the 1970 amendments hinder the fight against air pollution by voiding the principle of nondeterioration.

It is significant in this regard that recent congressional statements have supported the historic existence of a requirement of nondeterioration. The report of the House Committee on Interstate and Foreign Commerce on the proposed Clean Air Act Amendments of 1976 (H.R. Rep. No. 94-1175, May 15, 1976) endorses a new statutory definition of nondeterioration, commenting that "[t]he Committee has developed this section to provide clearer definition of the nearly decade-old policy (reflected in section 101 (b) of the Act) that significant deterioration of clean air must be avoided, and to provide more specific congressional guidance as to how this policy is to be implemented." *Id.* at 83. A contemporaneous report of the Senate Committee on Public Works on similar proposed amendments has both restated the language quoted above from the 1970 Senate report<sup>35</sup> and reaffirmed the continuing policy of nondeterioration:

A nondegradation policy was articulated first in Federal water pollution law. That was in 1965. The concept was incorporated into the 1967 Air Quality Act, which stated that a basic purpose of the Act was to "protect and enhance the quality of the Nation's air resources." That language was not altered by the 1970 Clean Air Amendments. This bill clarifies and details that policy.

*Clean Air Amendments of 1976*, S. Rep. No. 94-717 at 20 (March 29, 1976). It would fly in the face of overwhelming evidence of legislative intent to hold that the Clean Air

<sup>35</sup> See pp. [19a-20a] *supra*.



Act does not contain a requirement of prevention of significant deterioration.

Our belief that *Sierra Club v. Ruckelshaus* was decided properly is bolstered by its acceptance in a number of other circuits.<sup>36</sup> Petitioners suggest, however, that the later decision in *Train v. NRDC*, 421 U.S. 60 (1975), and enactment of the Energy Supply and Environmental Coordination Act of 1974, 88 STAT. 246, are necessarily inconsistent with the concept of nondeterioration of air quality. We reject both contentions.

*Train v. NRDC* involved construction of the "shall approve" language of Section 110(a)(3)(A),<sup>37</sup> which requires that the Administrator approve revisions of state plans which, after revision, meet the criteria of Section 110(a)(2). The Court held that state action which grants a variance to an individual pollution source must be approved by the Administrator if the approval will not expand the time for compliance with national primary ambient air quality standards<sup>38</sup> or otherwise violate the re-

<sup>36</sup> See *NRDC v. EPA*, 489 F.2d 390, 408 (5th Cir. 1974), *rev'd on other grounds, sub nom. Train v. NRDC*, 421 U.S. 60 (1975); *Big Rivers Electric Corp. v. EPA*, 8 ERC 1092 (6th Cir. 1975); *Union Electric Co. v. EPA*, 515 F.2d 206, 220 (8th Cir. 1975), *aff'd on other grounds, — U.S. —*, 44 U.S. L. WEEK 5060 (June 25, 1976); *NRDC v. EPA*, 507 F.2d 905, 913 (9th Cir. 1974). Cf. *Highland Park v. Train*, 519 F.2d 681, 685 (7th Cir. 1975).

<sup>37</sup> "The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph 2 [§ 110(a)(2)] and has been adopted by the State after reasonable notice and public hearings." Section 110(a)(3)(A), 42 U.S.C. § 1857c-5(a)(3)(A) (Supp. IV 1974).

<sup>38</sup> Section 110(a)(2)(A), 42 U.S.C. § 1857c-5(a)(2)(A) (1970): The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable

requirements of Section 110(a)(2). In the following passage, strongly pressed upon us by petitioners, the Court emphasized the mandatory language of Section 110(a)(2):

The Agency is plainly charged by the Act with the responsibility for setting the national ambient air standards. Just as plainly, however, it is relegated by the Act to a secondary role in the process of determining and enforcing the specific, source-by-source emission limitations which are necessary if the national standards it has set are to be met. Under § 110(a)(2), the Agency is *required* to approve a state plan which provides for the timely attainment and subsequent maintenance of ambient air standards, and which also satisfies that section's other general requirements. The Act gives the Agency no authority to question the wisdom of a State's choices of emission limitations if they are part of a plan which satisfies the standards of § 110(a)(2), and the Agency may devise and promulgate a specific plan of its own only if a State fails to submit an implementation plan which satisfies those standards.

421 U.S. at 79 (emphasis in original).<sup>39</sup> It is argued that this decision removes from the Administrator the discre-

notice and hearing and that—

(A) (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but . . . in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained[.]

<sup>39</sup> The language was repeated in *Hancock v. Train*, — U.S. —, —, 44 U.S. L. WEEK 4767, 4768 (June 7, 1976) (dictum), which concerned the obligation of federal facilities to comply with the requirements of state implementation plans.



tion to disapprove a plan which complies with Section 110(a)(2), and therefore requires that *Sierra Club v. Ruckelshaus* be overturned. This argument, however, is subject to the same analysis by which we reject the argument based on Section 110(a)(2) alone. Unlike the instant case, *Train* was concerned with air pollution below the national standards, and the question was whether individual variances would prevent the states from achieving the standards within the prescribed time limits. The Supreme Court in *Train* did not consider the issue of nondeterioration, even though the decision below was based in part on *Sierra Club v. Ruckelshaus*.<sup>40</sup> Rather than assume, as the industrial petitioners would have us, that *Train* silently overturned the earlier divided affirmance in *Sierra Club*, we find it more reasonable to conclude that the Court did not address the issue, and we reject the argument based on *Train*.

In another recent decision, *Union Electric Co. v. EPA*, — U.S. —, 44 U.S. L. WEEK 5060 (June 25, 1976), the Supreme Court found challenges to state implementation plans based on economic infeasibility to be barred by the mandatory nature of Section 110(a)(2). The Court found in the legislative history of the 1970 amendments a congressional determination that clean air objectives should take precedence over claims of economic or technological infeasibility:

As we have previously recognized, the 1970 Amendments to the Clean Air Act were a drastic remedy to what was perceived as a serious and otherwise unchecked problem of air pollution. The Amendments place the primary responsibility for formulating pollution control strategies on the States, but nonetheless

<sup>40</sup> *NRDC v. EPA*, *supra* note 36, 489 F.2d at 408. The *Train* decision was limited expressly to the question of approval of variances. 421 U.S. at 69-70.

subject \* \* \* the States to strict minimum compliance requirements. These requirements are of a "technology-forcing character," *Train v. NRDC*, 421 U.S., at 91, and are expressly designed to force regulated sources to develop pollution control devices that might at the time appear to be economically or technologically infeasible.

This approach is apparent on the face of § 110(a)(2). The provision sets out eight criteria that an implementation plan must satisfy, and provides that if these criteria are met and if the plan was adopted after reasonable notice and hearing, the Administrator "shall approve" the proposed state plan. The mandatory "shall" makes it quite clear that the Administrator is not to be concerned with factors other than those specified, *Train v. NRDC*, 421 U.S., at 71 n. 11, 79, and none of the eight factors appears to permit consideration of technological infeasibility.

— U.S. at —, 44 U.S. L. WEEK at 5063. Although the Court stressed the "shall approve" language of Section 110(a)(2), its construction was founded on a concern that the congressional mandate of prompt implementation of pollution control plans not be disserved. The Court was not presented with the distinct question whether the "shall approve" language of Section 110(a)(2) must be read to subvert the concomitant congressional directive that significant deterioration of air cleaner than the national standards be prevented.<sup>41</sup> Thus, despite the emphasis placed on (a)(2) by the opinions in *Train v. NRDC* and

<sup>41</sup> As was the case in *Train v. NRDC*, the lower court in *Union Electric* expressly had approved the concept of prevention of significant deterioration. *Union Electric Co. v. EPA*, *supra* note 36, 515 F.2d at 220 n.39. The Supreme Court affirmed the Court of Appeals without mentioning that issue.

*Union Electric*, we do not believe the result in the instant case is controlled by either opinion.

Petitioners also rely on the Energy Supply and Environmental Coordination Act of 1974 (ESECA), which was enacted to encourage stationary fuel-burning sources to convert from oil to coal, to minimize the nation's dependence on imported oil. Among other things, it (1) authorized the Federal Energy Administration to require power plants and other major fuel-burning sources to burn coal, (2) amended the Clean Air Act to provide a limited exemption from stationary source requirements to those converting facilities,<sup>42</sup> and (3) required the Administrator of EPA to review the implementation plan of each state and notify any state which could revise its plan as to stationary fuel-burning sources without violating the national ambient air quality standards.<sup>43</sup> The ESECA is accommodated in the "significant deterioration" regulations by 40 C.F.R. § 52.21(d)(1), which exempts from preconstruction review modifications "to utilize an alternative fuel, or higher sulfur content fuel."

Although conversion to "dirtier" fuels such as coal certainly will impair both improvement and maintenance of air quality, there is no reason to believe that passage of ESECA was intended to eliminate the requirement of non-deterioration.<sup>44</sup> The amendment was a necessary response

<sup>42</sup> Section 119, 42 U.S.C. § 1857c-10 (Supp. IV 1974).

<sup>43</sup> Section 110(a)(3)(B), 42 U.S.C. § 1857c-5(a)(3)(B) (Supp. IV 1974).

<sup>44</sup> The "purpose" section of ESECA, 15 U.S.C. § 791 (Supp. IV 1974), is as follows:

The purposes of this chapter are (1) to provide for a means to assist in meeting the essential needs of the United States for fuels, *in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and*

to the nationwide shortage of oil and natural gas, and no reason has been presented for ascribing to it a greater significance.<sup>45</sup>

We therefore find no substantial reason to question under ESECA or *Train*, the continuing validity of *Sierra Club v. Ruckelshaus*, and we proceed to the substance of the regulations under review using that decision as our guide.

B. Are the regulations invalid on the ground that only two of the six primary air pollutants are considered?

The regulations provide for control only of particulate matter and sulfur dioxide emissions,<sup>46</sup> whereas the Administrator also has identified carbon monoxide, nitrogen oxides, hydrocarbons, and photochemical oxidants as air pollutants which have an adverse effect on public health or welfare.<sup>47</sup> It is contended that the regulations violate the District Court's order in *Sierra Club v. Ruckelshaus* by failing to prevent significant deterioration of air quality with respect to those four pollutants.<sup>48</sup>

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*improve the environment*, and (2) to provide requirements for reports respecting energy resources.

(Emphasis added.)

<sup>45</sup> We also reject the argument that it is "unfair" to count the increased emissions from a source that is converted to coal against the allowable pollution increment for the area, since that modification is exempted from preconstruction review. We see no reason why a state in which major utilities have been forced to convert to coal may not choose to impose commensurately stricter standards on the remainder of the area.

<sup>46</sup> See note 18 *supra*.

<sup>47</sup> 40 C.F.R. §§ 50.8-50.11 (1975).

<sup>48</sup> The order required that the Administrator "prepare and publish proposed regulations, pursuant to 42 U.S.C. § 1857c-5(e), as to  
[continued]



EPA has responded that the interrelationships among those four pollutants, and the relationships between incremental increases in those pollutants and deterioration of air quality, are poorly understood and cannot be determined with any reasonable degree of accuracy:

These [four pollutants] are commonly referred to as "automotive pollutants," because the automobile is the major source of each of them \* \* \*. The first three (HC, NO<sub>2</sub> and O<sub>3</sub>) are also known as "photochemical" or "reactive" pollutants, because under the influence of sunlight, they enter into a complex chemical reaction in the atmosphere. \* \* \* The rate at which the reaction occurs depends on a number of variables, including temperature, humidity, solar intensity, and the concentrations of the input pollutants. \* \* \*

The chief reason for excluding photochemical pollutants from these regulations is that the relationship between the emission of HC and oxides of nitrogen, on the one hand, and the resulting ambient levels of the harmful pollutants, O<sub>3</sub> and NO<sub>2</sub>, on the other, is very poorly understood. The only method for relating emissions to air quality for these pollutants is the "area-wide proportional model." This model assumes, as its name suggests, that ambient pollutant levels are proportional to total emissions. The model is useful only in areas where ambient pollutant levels are substantial and well-monitored, as in urban areas with smog problems. \* \* \* But the proportional model cannot be used to regulate air quality deterioration in clean-air areas. This is because the assumptions

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any state plan which he finds, on the basis of his review, either permits the significant deterioration of existing air quality in any portion of any state or fails to take the measures necessary to prevent such significant deterioration." *Sierra Club v. Ruckelshaus*, Civil Action No. 1031-72 (D. D.C. May 30, 1972).

underlying the model do not hold in clean-air areas, and also because it is not possible to make accurate measurements of ambient levels of photochemical pollutants that are substantially below the levels of the national standards.

Br. for respondent at 32-33 (footnote omitted), *elucidating*, 39 Fed. Reg. 31006 (August 27, 1974); 39 Fed. Reg. 42511 (December 5, 1974); *Technical Support Document—EPA Regulations for Preventing the Significant Deterioration of Air Quality*, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (January 1975), at 21-27 (JA 117-123). EPA concluded that existing technology "is inappropriate for analyzing the incremental impact of individual new sources" with respect to the four "automotive pollutants," and that "[a]t this time, the only practical approach for dealing with these pollutants appears to be to minimize emissions as much as possible." 39 Fed. Reg. 42511 (December 5, 1974). EPA further has contended that ongoing programs toward reduction of automotive emissions "are adequate to prevent any significant deterioration due to sources of carbon monoxide, hydrocarbons or nitrogen oxides." "

Petitioners have emphasized that the four omitted pollutants can have extremely adverse effects on public health and welfare, and have noted that they are emitted by stationary sources as well as by moving vehicles. Petitioners have not, however, directly clashed with EPA's contention that it does not have technology or modeling techniques rationally to regulate emissions on a case-by-case basis. This is the type of policy decision in which the Agency's developed expertise is heavily implicated, and with which the court will not tamper so long as the decision was rational and based on consideration of the rele-

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" 39 Fed. Reg. 31006 (Aug. 27, 1974).



vant factors. *Ethyl Corp. v. EPA, supra*, —U.S. App. D.C. at —, —, — F.2d at —, —, slip op. at 66-74. Given the absence of any direct denials of EPA's assertions on this point, the Agency is entitled to claim the presumption of validity which attends its actions. *Id.*, slip op. at 68. We therefore hold that EPA did not act unlawfully in excluding from its regulations the four "automotive pollutants."

C. Are Class II and Class III invalid as permitting significant deterioration of air quality?

D. Is it unlawful to make determinations as to permissible air quality deterioration on the basis of considerations other than air quality?

It is argued by Sierra Club that Classes II and III, by permitting increases in sulfur dioxide and particulate matter pollution to levels which in some areas may be many times present concentrations, allow significant deterioration of air quality. The "significance" is primarily a matter of the numbers involved; although evidence has been presented that levels of pollution below the national secondary standards may have adverse health effects,<sup>50</sup> it is for the Administrator rather than the courts to determine that the national secondary standards no longer can be said to protect the public from "any known or anticipated adverse effects" of a pollutant. The question of significance thus leads by implication to a second line of argument—that it is unlawful to consider deterioration of air quality "insignificant" simply because it accompanies normal, controlled economic development.

<sup>50</sup> Br. for petitioners Sierra Club *et al.*, No. 74-2063, at 18-20. See also *Clean Air Act Amendments of 1976*, Report of the Senate Committee on Public Works, S. Rep. No. 94-717 at 19-27 (March 29, 1976); *Clean Air Act Amendments of 1976*, Report of the House Committee on Interstate and Foreign Commerce, H.R. Rep. No. 94-1175 at 83-116 (May 15, 1976).

EPA recognized, in developing the concept of "significant deterioration" pursuant to Judge Pratt's order, that "[p]ending the development of adequate scientific data on the kind and extent of adverse effects of air pollutant levels below the secondary standards, significant deterioration must necessarily be defined without a direct quantitative relationship to specific adverse effects on public health and welfare." 39 Fed. Reg. 18987 (July 16, 1973). It therefore determined that each state must determine what level of incremental pollution, taking into account the air quality and social and economic needs and objectives of the area, would be "significant deterioration" of its air quality.<sup>51</sup>

In that context, it was a rational policy decision that the significance of deterioration of air quality should be determined by a qualitative balancing of clean air considerations against the competing demands of economic growth, population expansion, and development of alternative sources of energy. The approach provides a workable definition of significant deterioration which neither stifles necessary economic development nor permits unregulated deterioration to the national standards.<sup>52</sup> We therefore find that EPA acted within the discretion it is granted as to matters of policy<sup>53</sup> in choosing this design to prevent significant deterioration of air quality.

<sup>51</sup> See pp. [10a-11a] *supra*.

<sup>52</sup> EPA acknowledges that all states theoretically could reclassify to Class III, thereby permitting unregulated deterioration to the national standards. It asks that the states not "arbitrarily and capriciously" disregard its outlined considerations before redesignating areas. 40 C.F.R. § 52.21(c)(3)(vi)(a).

<sup>53</sup> "However formal the type of agency proceeding, an agency's policy choices are reviewed under the arbitrary and capricious standard, which asks merely whether the policy choice is rationally connected to its factual basis." *Judicial Review of the Facts in Informal Rulemaking: A Proposed Standard*, 84 YALE L. J. 1750, 1751 (1975).

We may state our belief, as a general overview at this point, that for the most part it somewhat misses the mark to raise objections to the specific emission limits of the regulations under review. EPA has emphasized that the individual states are free to conceive and adopt their own methods of preventing significant deterioration. A state may use EPA's system to classify itself as industrial-metropolitan (Class III), as anticipating normal economic growth (II), or as desirous of protecting its clean air (I). But it also may develop its own scheme, based on its own needs, so long as the regulatory structure prevents significant deterioration of air cleaner than the national standards. Given the broad power vested in the states to alter or amend these regulations, we find little merit in objections to the specifics of the classification scheme itself.

E. Has the effective date of the regulations been postponed unlawfully beyond the date contemplated by the Clean Air Act?

The Clean Air Act of 1970 imposed a series of time limits for the various steps leading up to approval of state implementation plans. Under that timetable regulations should have become effective by the middle of 1972.<sup>54</sup>

<sup>54</sup> The Clean Air Act Amendments of 1970 were added on Dec. 31, 1970, 84 STAT. 1677. The Administrator was given 90 days in which to propose and promulgate national primary and secondary ambient air quality standards. Section 109(a)(1)(B), 42 U.S.C. § 1857c-4(a)(1)(B). The states then were given nine months to submit proposed implementation plans to the Administrator, § 110(a)(1), 42 U.S.C. § 1857c-5(a)(1), and the Administrator had four months to approve or disapprove the plans. Section 110(a)(2), 42 U.S.C. § 1857c-5(a)(2). The Administrator was to "promptly prepare and publish" implementation plans for states which failed to submit a complying plan or which failed to revise a plan after 60 days notice. Section 110(c), 42 U.S.C. § 1857c-5(c). The target date for effectiveness of state implementation plans was therefore mid-1972.

The regulations employ two later effective dates. First, emissions increments are measured from a January 1, 1975 baseline, and all sources for which "approval" is given after that date will have their emissions counted against the allowable increment for the region. 40 C.F.R. § 52.21(d)(2)(i) (1975). Second, preconstruction review is provided only for sources which have "not commenced construction or modification prior to June 1, 1975." 40 C.F.R. § 52.21(d)(1) (1975). "'Commenced' means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification." 40 C.F.R. § 52.21(b)(7) (1975). Compare 40 C.F.R. § 52.01(b) (1975). All later-commenced source construction must be reviewed for compliance with new source performance standards and for a determination that construction will not cause the pollution increments of any area to be violated. 40 C.F.R. § 52.21(d)(2) (1975), *as amended*, 40 Fed. Reg. 42011 (September 10, 1975).

We are asked to hold that sources for which construction was commenced after mid-1972 must be counted against the allowable pollution increments for the various regions. EPA answers that inclusion of the earlier construction would limit practical use of the regulations to regulate future development. We accept the latter position. Whatever the effect of past construction has been upon present pollution, each state must determine what will be appropriate for future air quality and economic development. So long as any state may choose to limit future development to compensate for excessive past pollution, the choice of starting dates for the applicability of the regulations appears to be irrelevant.<sup>55</sup> For the same reason we

<sup>55</sup> Similarly, we find no ground for objection to the manner in [continued]



do not believe EPA acted unreasonably in failing to count increases in pollution since 1972 against the allowable increments. It was a rational policy decision to limit the instant regulations to prospective concerns only.

F. Is it arbitrary and capricious to review proposed construction of stationary sources on the basis of compliance with the New Source Performance Standards, rather than on the basis of Best Available Control Technology on a case-by-case basis?

G. Was the Administrator required to provide for preconstruction review of all sources, rather than for "significant" sources only?

40 C.F.R. § 52.21(d)(ii) (1975) requires that new sources which are subject to preconstruction review meet the level of emissions that would be achieved by application of the Best Available Control Technology (BACT); Section 52.01(f) defines BACT as equivalent to the New Source Performance Standards (NSPS) promulgated under Section 111 of the Clean Air Act, 42 U.S.C. § 1857c-6 (1970), *amended* (Supp. IV 1974), when those standards are available. If no NSPS has been established for a category of sources, preconstruction review of emission reduction systems is done on a case-by-case basis. 40 C.F.R. §§ 52.21(d)(2)(ii), 52.01(f) (1975). The Sierra Club posits that the NSPS guidelines, defined by Section 111 as "the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Ad-

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which EPA has defined commencement of construction. 40 C.F.R. § 52.21(b)(7) (1975). Even if a source on which construction has "commenced" is not subject to preconstruction review, its emissions may be considered in choosing the appropriate pollution increment to be applied to the area.

ministrator determines has been adequately demonstrated," are a "lowest common denominator"-based group and are inconsistent with the policy of nondeterioration.

We accept EPA's response that case-by-case review of all new sources would not only be unworkable, but would undermine Section 111 by limiting its application of NSPS to those areas which have not yet achieved the national secondary standards. It appears, in addition, that application of NSPS rather than BACT will not of necessity lead to more total pollution; a given area still is limited to the specified increment for its classification, and the use of a less effective emission reduction system by one new statutory source will simply use up more of the allowable increment and limit opportunities for other proposed new sources. This trade-off, between types of control systems and opportunities for new source construction, is best left to the states, which by delegation will administer the preconstruction review. As the Supreme Court held in *Train v. NRDC, supra*, "so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation." 421 U.S. at 79. We therefore hold that the use of NSPS is rational and in accord with the Clean Air Act.

An additional challenge to the procedures for preconstruction review is based on the allegedly unlawful limitation of review to 19 specified categories of sources.<sup>56</sup> We

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<sup>56</sup> The 19 listed categories are:

- (i) Fossil-Fuel Steam Electric Plants of more than 1000 million B.T.U. per hour heat input.
- (ii) Coal Cleaning Plants.
- (iii) Kraft Pulp Mills.
- (iv) Portland Cement Plants.

[continued]



find this argument subject to the analysis presented above with respect to use of NSPS rather than BACT. Review of every new source of pollution clearly would be impossible since every gas- or oil-heated house is a source of some pollution. The decision to review only those sources which emit more than 25 pounds per hour of sulfur dioxide or particulate matter<sup>57</sup> does not mean there will of necessity

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- (v) Primary Zinc Smelters.
  - (vi) Iron and Steel Mills.
  - (vii) Primary Aluminum Ore Reduction Plants.
  - (viii) Primary Copper Smelters.
  - (ix) Municipal Incinerators capable of charging more than 250 tons of refuse per 24 hour day.
  - (x) Sulfuric Acid Plants.
  - (xi) Petroleum Refineries.
  - (xii) Lime Plants.
  - (xiii) Phosphate Rock Processing Plants.
  - (xiv) By-Product Coke Oven Batteries.
  - (xv) Sulfur Recovery Plants.
  - (xvi) Carbon Black Plants( furnace process).
  - (xvii) Primary Lead Smelters.
  - (xviii) Fuel Conversion Plants.
  - (xix) Ferroalloy production facilities commencing construction after October 5, 1975.

40 C.F.R. § 52.21(d)(1)(i)-(xix) (1975), *as amended*, 40 Fed. Reg. 42011 (Sept. 10, 1975).

<sup>57</sup> The standard of 25 pounds/hour of emissions for addition of new categories to the list of those subject to preconstruction review was proposed on June 9, 1975 (40 Fed. Reg. 24534) and adopted Sept. 10, 1975 (40 Fed. Reg. 42011):

[T]he criteria the Administrator intends to use in adding further sources in the future \* \* \* are:

- (1) a new source performance standard for sulfur dioxide (SO<sub>2</sub>) or particulate matter has been established for the source or any facility of the source under Part 60 of this chapter, and (2) the established new source performance standard will allow any anticipated future plant affected by the standard to emit SO<sub>2</sub> or particulate matter

be more total pollution; it means only that a large number of minor sources could use up the area's allowable increment and thereby preclude construction of new major sources of pollution. As EPA stated in a document explaining its regulations:

The 18 categories which are covered by the regulation, except for fuel conversion plants, are the largest present emitters of SO<sub>2</sub> and TSP on a nationwide basis. Fuel conversion plants (coal gasification and liquefaction, oil shale processing, etc.) were included due to their significant growth potential, particularly in presently clean areas \* \* \*. The air quality impact of sources not included in the 18 categories is taken into account since the total air quality deterioration above the baseline is taken into account when an application to construct a new source of one of the 18 categories reviewed.

*Technical Support Document—EPA Regulations for Preventing the Significant Deterioration of Air Quality, US. Environmental Protection Agency Office of Air Quality Planning & Standards (January 1975), at 27-28.* Further, it is within the power of the various states to enact more stringent controls, and expanded preconstruction review procedures, should limited review lead to problems in regulating incremental pollution. We therefore hold that the regulations are not invalid insofar as provision is made for preconstruction review of only the specified categories of stationary sources.

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in excess of 25 pounds per hour from the affected facility or facilities when operating at maximum design capacity.

The latter choice also added the 19th category, Ferroalloy production facilities.

H. Are the regulations arbitrary and capricious on the ground that the allowable increments are unrelated to anticipated adverse effects on public health and welfare?

The regulations under review establish a classification scheme which is not based on demonstrated adverse air quality effects, but rather on a balancing of concerns with air quality, economic and social needs and objectives, and development of energy sources. The industrial petitioners contend that EPA is not authorized to promulgate regulations which are not related to adverse air quality effects, and that Classes I and II therefore are invalid.

The need to prevent significant deterioration of air cleaner than the national standards, and the statutory authorization therefore, was settled by the *Sierra Club v. Ruckelshaus* litigation. It clearly is a rational legislative purpose to protect and enhance the quality of the nation's air, even in the absence of quantified evidence of adverse effects.<sup>58</sup>

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<sup>58</sup> EPA emphasized in promulgating regulations that levels of pollution below the national standards still may have some adverse effects:

Limitations on air quality that result in cleaner air than the national ambient air quality standards cannot • • • be based on any quantitative measure of harm to either public health or welfare. This is not, however, to say that there are no possible unquantified adverse effects on public health or welfare below the levels of the national standards. Examples of such unquantified effects involve the transformation of sulfur dioxide into suspended sulfates and sulfuric acid aerosols, resulting in possible effects on health, visibility, climatic changes, acidity of rain, and deterioration of materials.

Since there is no way to relate "significance" of deterioration of air quality to any adverse effects resulting from air quality levels cleaner than the national standards, EPA concluded that the determination of what is "significant" deterioration must take into account factors other than air quality

The District Court order in *Sierra Club v. Ruckelshaus* mandated that EPA enforce this legislative purpose by preventing significant deterioration of air quality, but left definition of "significant" to the Agency. EPA's solution was a definition created by its own implementation; each state's evaluation of the relative importance of the competing interests which surround continued maintenance of air quality will determine what level of deterioration would be significant for that state. The three classifications thus are not intended to represent a scientific conclusion as to what constitutes significant deterioration; rather, they are suggested frameworks for use by the states after independent evaluation. Because the regulations do not purport to be mandatory requirements based on scientific research, they properly cannot be judged by asking whether the increments are related to demonstrated health effects. As we have noted above, any state could adopt even more stringent regulations by proposing its own revision to its implementation plan.<sup>59</sup>

We therefore find insubstantial the objection that the varying allowable increments presented in the instant regulations are unrelated to demonstrated adverse health effects. The regulations flow from a valid legislative goal,

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alone. For example, relatively minor deterioration of the aesthetic quality of the air may be very significant in a recreational area in which great pride (and economic development) is derived from the "clean air."

*Technical Support Document—EPA Regulations for Preventing the Significant Deterioration of Air Quality*, U.S. Environmental Protection Agency, Office of Air Quality Planning & Standards (January 1975), at 6. See also *Clean Air Act Amendments of 1976*, Report of the Senate Committee on Public Works, S. Rep. No. 94-717 at 19-27 (March 29, 1976); *Clean Air Act Amendments of 1976*, Report of the House Committee on Interstate and Foreign Commerce, H.R. Rep. No. 94-1175 at 83-116 (May 15, 1976).

<sup>59</sup> See pp. [14a-15a] *supra*.



and we believe EPA has acted reasonably in permitting each state, in its informed discretion, to develop a workable definition of significant deterioration.

I. Are the regulations unworkable because present modeling techniques are inadequate to predict precisely how a new source will affect the ambient air?

Some petitioners<sup>60</sup> have objected that present computer modeling technology is inadequate to predict with precision what effect a proposed new source will have on the ambient air, and therefore on the allowable increment for a given region. EPA does not dispute the point as to the accuracy of existing techniques, but does argue that present diffusion modeling techniques, "while not corresponding to actual conditions in the ambient air, do provide a consistent and reproducible guide which can be used in comparing the relative impact of a source." 39 Fed. Reg. 31003 (August 27, 1974). So long as the method of measurement is consistent, it may be used as a reliable benchmark of the relative impact of different sources; EPA argues that it therefore is unnecessary to be able to guarantee with precision what effect a source will have.

We have no basis on which to question EPA's judgment as to its predictive techniques. Any consistent method of prediction can be adjusted in light of actual experience, and a state therefore may adjust its guidelines for future development on the basis of changes in the measured pollution levels over time. We cannot hold at this time, therefore, that lack of precision alone is a substantial objection to the methods which may be used to estimate the impact of a proposed source on actual levels of pollution.

<sup>60</sup> See, e.g., *br. of American Petroleum Institute et al.*, in No. 75-1665 at 38.

J. Did EPA violate the Clean Air Act

- (1) by not permitting submission of revised plans before promulgating regulations, or
- (2) by not holding hearings in each state before promulgating the regulations?

The Administrator is required to prepare and publish his own implementation plan, or portion thereof, for a state if (a) the state fails to submit a plan as to any national standard, (b) the plan is not in accordance with the requirements of Section 110 of the Act, or (c) the state fails, within 60 days, to revise its plan pursuant to Section 110(a)(2)(H), which requires that implementation plans provide for revisions (i) to take account of changes in technology or (ii) if the Administrator determines that the plan is inadequate to achieve the primary or secondary standards. Section 110(c)(1), 42 U.S.C. § 1857c-5(c)(1) (Supp. IV 1974). Subsection (c)(1) also contains a hearing requirement; if a state did not hold a public hearing with respect to the plan or revision being promulgated, the Administrator must provide a hearing within the state. The Administrator is to promulgate his regulations within six months, unless within that time the state has adopted and submitted an implementation plan which is in accord with the requirements of Section 110. *Id.*

It is contended that the instant regulations, which amended the implementation plans of all states,<sup>61</sup> constituted a "revision" under Section 110(a)(2)(H). Under Section 110(c)(1)(C) the Administrator may promulgate new regulations only if a state fails, after 60 days, to submit the required (a)(2)(H) revision. Further, if the regulations are considered "revisions," it is claimed, the Administrator was required by Section 110(c)(1) to hold a hearing in each state before promulgating the regulations.

<sup>61</sup> See note 9 *supra*.



The original order of the District Court required that the "Administrator \* \* \* prepare and publish proposed regulations, pursuant to 42 U.S.C. § 1857c-5(c), as to any state plan which he finds, on the basis of his review, either permits the significant deterioration of existing air quality in any portion of any state or fails to take the measures necessary to prevent such significant deterioration. Such regulations shall be promulgated within six months of this order." *Sierra Club v. Ruckelshaus*, Civil Action No. 1031-72 (D. D.C. May 30, 1972). That order—which was affirmed by this court and the Supreme Court—clearly did not contemplate that a hearing be held in each state prior to promulgation of regulations, nor did it require that the states be given a prior opportunity to revise their plans. We reaffirm the order in both respects.

All states had held public hearings on their proposed implementation plans before the District Court order was entered.<sup>62</sup> After disapproving all state plans insofar as they failed to prevent significant deterioration,<sup>63</sup> the Administrator held five regional hearings in Washington, Atlanta, Dallas, Denver, and San Francisco on proposed regulations,<sup>64</sup> and solicited written comments.<sup>65</sup> We believe that procedure was sufficient in the circumstances presented. Unfortunately, the requirement of prevention of significant deterioration does not fit neatly into the statutory scheme, as it is not expressly included in Section 110 of the Act. The Administrator's disapproval of all plans pursuant to the District Court order, and the subsequent promulgation

<sup>62</sup> In its initial approval and disapproval of state plans, published May 31, 1972 (37 Fed. Reg. 10842), EPA noted that all states had held hearings and had submitted implementation plans.

<sup>63</sup> 37 Fed. Reg. 23836 (Nov. 9, 1972).

<sup>64</sup> See 39 Fed. Reg. 31000 (Aug. 27, 1974).

<sup>65</sup> *Id.*

of regulations, were required by Section 101 of the Act and by the legislative history, but were not within the defined processes of Section 110(c). Implementation of the District Court order required an exercise of discretion by the Administrator, and we find that he acted well within that discretion by concluding that only regional hearings were necessary to supplement the hearings which had already been held in all states.

In making this decision we wish to emphasize, first, that petitioners have not alleged with any specificity how they were harmed by the lack of individual state hearings. We are presented only with a generalized statutory claim,<sup>66</sup> which apparently never was raised before the Agency. Second, it should be remembered that the states arguably have been denied no rights by promulgation of the nondegradation regulations. They remain free, after public hearing, to develop their own regulatory scheme to supplant that promulgated by EPA, so long as the substitute prevents significant deterioration of air quality.<sup>67</sup> We cannot conclude, then, that the regulations are defective on procedural grounds.

<sup>66</sup> *Cf. American Airlines, Inc. v. CAB*, 123 U.S.App.D.C. 310, 318-319, 359 F.2d 624, 632-633, *cert denied*, 385 U.S. 843 (1966):

[T]here is no basis on the present record for concluding that additional procedures were requisite for fair hearing. We might view the case differently if we were not confronted solely with a broad conceptual demand for an adjudicatory-type proceeding, which is at least consistent with, though we do not say it is attributable to, a desire for protracted delay. Nowhere in the record is there any specific proffer by petitioners as to the subjects they believed required oral hearings, what kind of facts they proposed to adduce, and by what witnesses, etc. \* \* \*

See also *United States v. L. A. Trucker Lines, Inc.*, 344 U.S. 33 (1952).

<sup>67</sup> See pp. [14a-15a] *supra*.

K. By providing for reclassification of federal and Indian lands independent of state action, do the regulations abrogate authority granted to the states by the Clean Air Act?

Federal land managers and Indian governing bodies are authorized to propose redesignation of their lands, after consultation with officials of other affected areas and compliance with procedural and hearing requirements. 40 C.F.R. § 52.21(c)(3) (1975).<sup>68</sup> The industrial petitioners and the petitioning state governments object that this authority violates the delegation to the states of authority over air quality within their boundaries in Section 101(a)(3), 42 U.S.C. § 1857(a)(3),<sup>69</sup> and Section 107(a), 42 U.S.C. § 1857c-2(a),<sup>70</sup> that it contradicts the submission of federal facilities to state regulation in Section 118, 42 U.S.C. § 1857f,<sup>71</sup> and that the authority to redesignate gives these

<sup>68</sup> See pp. [11a-12a] *supra*.

<sup>69</sup> 42 U.S.C. § 1857(a)(3) (1970):

(a) The Congress finds—

• • • • •

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments[.]

<sup>70</sup> 42 U.S.C. § 1857c-2(a) (1970):

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

<sup>71</sup> 42 U.S.C. § 1857f (1970):

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall comply with Federal,

lands tremendous practical power over neighboring areas which might be hindered in their development because of designation of federal or Indian lands as Class I areas.<sup>72</sup>

EPA has responded that federal land managers and Indian governing bodies have an important legal interest in protecting the air quality of their lands, that redesignation may not be proposed without consultation with officials of the affected states,<sup>73</sup> and that the Administrator may dis-

State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements. The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so • • • • •

<sup>72</sup> See 39 Fed. Reg. 42512 (Dec. 5, 1974):

Under the regulations promulgated below, a source could not be allowed to construct if it would violate an air quality increment either in the area where the source is to be located or in any neighboring area in the State. Therefore, wherever a Class I area adjoins a Class II or III area, the potential growth restrictions, especially for power plant development, extends [sic] well beyond the Class I boundaries into the adjacent area. A similar situation exists, to a greater or lesser degree, wherever areas of different classification adjoin each other. Therefore, the area with the less restrictive classification should include an additional area at the periphery where it is clearly recognized that development will be somewhat restricted due to the adjacent "cleaner" area. As a result, a Class I redesignation could be fairly limited in size, yet the adjoining Class II or Class III areas would need to cover a substantial area in order to fully utilize the Class II or III increment. Again, it should be clear that the Class II or III increment could only be fully utilized toward the center of the area and that at the periphery, allowable deterioration will be dictated by the adjoining Class I area rather than the Class II or III increment.

<sup>73</sup> 40 C.F.R. § 52.21(c)(3)(iv), (v) (1975).



approve redesignation if arbitrary and capricious disregard of the interests of other affected areas is demonstrated.<sup>74</sup> With regard to submission of federal facilities to state regulation, EPA notes that federal lands may be redesignated only to a more restrictive classification than that applicable to the entire state,<sup>75</sup> and thus cannot contribute to unwanted deterioration of air quality.

We pretermitt this question, as we find that the issue is not yet ripe for review.<sup>76</sup> No federal or Indian land has yet

<sup>74</sup> 40 C.F.R. § 52.21(c)(3)(vi)(b), (c) (1975).

<sup>75</sup> 40 C.F.R. § 52.21(c)(3)(iv) (1975).

<sup>76</sup> See *Toilet Goods Ass'n Inc. v. Gardner*, 387 U.S. 158 (1967), in which cosmetic manufacturers had brought a pre-enforcement action to challenge the authority of the Commissioner of Food and Drugs to issue regulations under the Color Additive Amendments to the Federal Food, Drug, as Cosmetic Act. The regulation at issue authorized the Commissioner to suspend certification service to any person who denied the FDA free access to manufacturing information. Although the issue was purely legal, the Court found that, as framed, it was not appropriate for judicial resolution:

The regulation serves notice only that the Commissioner *may* under certain circumstances order inspection of certain facilities and data, and that further certification of additives *may* be refused to those who decline to permit a duly authorized inspection until they have complied in that regard. At this juncture we have no idea whether or when such an inspection will be ordered and what reasons the Commissioner will give to justify his order. The statutory authority asserted for the regulation is the power to promulgate regulations "for the efficient enforcement" of the Act, § 701(a). Whether the regulation is justified thus depends not only, as petitioners appear to suggest, on whether Congress refused to include a specific section of the Act authorizing such inspections, although this factor is sure to be a highly relevant one, but also on whether the statutory scheme as a whole justified promulgation of the regulation. \* \* \* This will depend not merely on an inquiry into statutory purpose, but concurrently on an understanding of what types of enforcement problems are encountered by the FDA, the need for various sorts of supervision in order to

been redesignated, and to that extent we cannot be certain how a conflict may evolve. If the Administrator were to approve, as replacements for these regulations, individual state plans which did not include the powers granted to federal land managers and Indian governing bodies, the problems foreseen by petitioners might never arise.

We note that reservation of power to federal land managers and Indian governing bodies should have no effect on present conduct; there appears to be no reason why economic development of any area should be hindered by the possibility that a nearby area may be redesignated in the future to a more restrictive classification. We therefore do not foresee any irreparable injury which may arise from deferral of this question until it arises in a more concrete context.

#### L. Are the regulations constitutional?

We find the arguments challenging the constitutionality of the nondeterioration regulations to be insubstantial. Regulation of air pollution clearly is within the power of the federal government under the commerce clause,<sup>77</sup> and we can see no basis on which to distinguish deterioration of air cleaner than national standards from pollution in other

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effectuate the goals of the Act, and the safeguards devised to protect legitimate trade secrets \* \* \*. We believe that judicial appraisal of these factors is likely to stand on a much surer footing in the context of a specific application of this regulation than could be the case in the framework of the generalized challenge made here.

387 U.S. at 163-164 (emphasis in original).

<sup>77</sup> See *District of Columbia v. Train*, 172 U.S.App.D.C. 311, 328, 521 F.2d 971, 988 (1975); *Pennsylvania v. EPA*, 500 F.2d 246, 259 (3d Cir. 1974); *South Terminal Corp. v. EPA*, 504 F.2d 646, 677 (1st Cir. 1974).



contexts.<sup>78</sup> Nor do we agree that the regulations bear no rational relationship to protection of public health and welfare and therefore violate the due process clause of the Fifth Amendment. There is a rational relationship between air quality deterioration and the public health and welfare,<sup>79</sup> and there is a proper legislative purpose<sup>80</sup> in prevention of significant deterioration of air quality. Neither can the regulations be construed as an unconstitutional "taking" under the Fifth Amendment, any more than existing emission control regulations represent such a "taking."<sup>81</sup> The use of private land certainly is limited but the

<sup>78</sup> Indeed, the vigorous objections that have been mounted against redesignation of federal lands or Indian lands are based on recognition that a pollution source can have air quality effects over a large area.

<sup>79</sup> See note 58 *supra*.

<sup>80</sup> See *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258-259 (1964), in which the Court held the Civil Rights Act of 1964 to be a valid exercise of congressional power under the commerce clause, and found the Act not barred by the Fifth Amendment:

Nor does the Act deprive appellant of liberty or property under the Fifth Amendment. The commerce power invoked here by the Congress is a specific and plenary one authorized by the Constitution itself. The only questions are: (1) whether Congress had a rational basis for finding that racial discrimination by motels affected commerce, and (2) if it had such a basis, whether the means it selected to eliminate that evil are reasonable and appropriate. \* \* \*

See also *Nebbia v. New York*, 291 U.S. 502, 537 (1934) (Fourteenth Amendment).

<sup>81</sup> See *South Terminal Corp. v. EPA*, 504 F.2d 646, 678 (1st Cir. 1974), in which the court upheld a transportation control plan which mandated a 40% reduction in available off-street parking spaces:

[T]he Government has not taken title to the spaces, and the decision about alternative uses of the space has been left to the owner. The takings clause is ordinarily not offended by regula-

limitation is not so extreme as to represent an appropriation of the land.

The Tenth Amendment is not implicated either by infringement on the reserved powers of the states, *cf. National League of Cities v. Usery*, — U.S. —, 44 U.S. L. WEEK 4974 (June 24, 1976), or by any requirement of affirmative action, as in *District of Columbia v. Train*, 172 U.S.App.D.C. 311, 521 F.2d 971 (1975). The states retain broad discretion under the regulations to control the use of their land and the scope of their economic development, and are required to take no affirmative action. Preconstruction review under the regulations is conducted by the Administrator unless a state requests that responsibility be delegated to it. 40 C.F.R. § 52.21(d), (f) (1975).

Last, we find no merit to the argument that the congressional delegation of authority to EPA is unconstitutionally vague. There is substantial basis for the instant regulations in both the Clean Air Act and its legislative history, and we find the regulations to be a reasonable means of implementing the congressional intent.<sup>82</sup> See *South Terminal Corp. v. EPA*, 504 F.2d 646, 676-677 (1st Cir. 1974).

tion of uses, even though the regulation may severely or even drastically affect the value of the land or real property. If the highest-valued use of the property is forbidden by regulations of general applicability, no taking has occurred so long as other lower-valued, reasonable uses are left to the property's owner.

\* \* \*

<sup>82</sup> In *Lichter v. United States*, 334 U.S. 742, 785 (1947), the Court upheld a congressional grant of authority to the Secretary of War, the Secretary of the Navy, and the Chairman of the Maritime Commission to renegotiate contracts and to recover "excessive profits." The Court applied the following reasoning to the claim that the term "excessive profits" was unconstitutionally vague:

It is not necessary that Congress supply administrative officials with a specific formula for their guidance in a field where flexibility and the adaptation of the congressional policy to

[continued]

## VI. CONCLUSION

We find no ground on which to disturb the regulations under review, and we therefore affirm the EPA "Prevention of Significant Air Quality Deterioration" regulations.<sup>83</sup> Our review of *Sierra Club v. Ruckelshaus* and subsequent events has revealed no substantial reason for rejection of that decision, and we hold that the nondeterioration regulations promulgated pursuant to that decision are both rational and in accordance with law.

*Affirmed.*

*Circuit Judge WILKEY concurs in the result only.*

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infinitely variable conditions constitute the essence of the program. "If Congress shall lay down by legislative act an intelligible principle . . . such legislative action is not a forbidden delegation of legislative power." *Hampton Co. v. United States*, 276 U.S. 394, 409. Standards prescribed by Congress are to be read in the light of the conditions to which they are to be applied. "They derive much meaningful content from the purpose of the Act, its factual background and the statutory context in which they appear." *American Power & Light Co. v. S.E.C.*, 329 U.S. 90, 104. • • •

<sup>83</sup> As noted above, *see* pp. [45a-48a], we do not decide the question whether reclassification of federal and Indian lands independent of state action may be unlawful.

[18986]\*

[Federal Register, Vol. 38, No. 135—Monday, July 16, 1973]

## ENVIRONMENTAL PROTECTION AGENCY\*\*

[40 CFR Part 52]

## APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

## Prevention of Significant Air Quality Deterioration

Notice is hereby given that the Administrator of the Environmental Protection Agency (EPA) intends to issue regulations setting up a mechanism for preventing significant deterioration of air quality in areas where air pollution levels currently are below the national ambient air quality standards (40 CFR Part 50). These regulations would be issued under the Clean Air Act and would prescribe steps to be taken by the States. This notice sets forth four proposed plans reflecting various approaches to defining and preventing significant deterioration. It is the Administrator's intention not only to receive written comments on these proposals but also to hold public hearings in various places in order to provide the greatest possible opportunity for public involvement in this rule-making. Certain questions on which public comment is specifically invited are identified in the concluding section of this preface.

Publication of this notice is related to a suit filed May 24, 1972, in which the Sierra Club and other groups sought a declaratory judgment and injunction requiring the Admin-

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\* Bracketed numbers represent the page in the *Federal Register* upon which material following such a number can be found.

\*\* The "significant deterioration" regulations, as reprinted on pp. 91a to 291a herein, appeared on pp. 1-36, 688-98 of the joint appendix filed in the consolidated cases below.



istrator to disapprove all State implementation plans which did not contain procedures for preventing significant deterioration in any portion of any State where air quality is superior to national standards. On May 30, 1972, the District Court for the District of Columbia granted the plaintiffs' motion for a preliminary injunction and issued a preliminary injunction requiring the Administrator, within four months thereafter, to review all State plans and "disapprove any portion of a State plan which fails to effectively prevent significant deterioration of existing air quality." The preliminary injunction also required the Administrator to promulgate regulations "as to any State plan which he finds, on the basis of his review, either permits the significant deterioration of existing air quality in any portion of any State or fails to take the measures necessary to prevent such significant deterioration." On November 1, 1972, the decision of the District Court was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit on the basis of an opinion filed by the District Court on June 2, 1972. Subsequently, the U.S. Supreme Court stayed the effect of the District Court's decision pending its consideration and disposition of the case on application for a writ of certiorari. On June 11, 1973, the Supreme Court, by an equally divided court, affirmed the judgment of the Court of Appeals; no opinion was issued.

Each State plan has been reviewed in accordance with the preliminary injunction issued by the District Court. Although many State plans included regulations which have the potential for resulting in the attainment of air quality better than that required by the national standards, and although some State plans contained general policy statements indicating an intent to prevent or minimize deterioration of air quality, none was found to contain explicit and enforceable regulations for implementing such a policy. Accordingly, all State plans were disapproved by the Administrator on November 9, 1972 (37 FR 23836), in-

sofar as they failed to provide for the prevention of significant deterioration. This disapproval did not affect the status of any previously or subsequently approved regulations designed to provide for the attainment and maintenance of national ambient air quality standards. Furthermore, in the absence of Federal regulations prescribing requirements for prevention of significant deterioration the Administrator's disapproval was necessarily based on a generalized assessment of the State plans. To the extent that any State plan is determined to meet any of the requirements ultimately established as a result of this rule-making proceeding, the Administrator's disapproval will be appropriately modified.

In EPA's view, there has been no definitive judicial resolution of the issue whether the Clean Air Act requires prevention of significant deterioration of air quality. When the issue was presented to the Supreme Court, the Court was equally divided. The Court's action had the effect of permitting to stand the judgment of the Court of Appeals for the District of Columbia Circuit, which was entered in the procedural context of the issuance of a preliminary injunction.

In the absence of a definitive judicial decision on the issue, the Administrator adheres to the view that Section 110 of the Clean Air Act requires EPA to approve State implementation plans that will attain and maintain the national ambient air quality standards, and that the Act does not require EPA or the States to prevent significant deterioration of air quality. The proposed alternative regulations set forth herein would establish a mechanism for preventing significant deterioration pursuant to the preliminary injunction issued by the District Court.

#### PUBLIC POLICY ISSUE

The question raised by the Sierra Club suit was a legal issue, i.e., interpretation of the language and legislative



history of the Clean Air Act. Thus, the courts were asked to determine that the Act requires the Administrator to ensure that State implementation plans will not permit significant deterioration of air quality. What the courts were not asked to determine is what constitutes significant deterioration and exactly how it will be prevented.

A national policy of preventing significant deterioration, however defined and implemented, will have a substantial impact on the nature, extent, and location of future industrial, commercial, and residential development throughout the United States. It could affect the utilization of the Nation's mineral resources, the availability of employment and housing in many areas, and the costs of producing and transporting electricity and manufactured goods. Without implying any judgment as to the general acceptability of any of the effects of a "no significant deterioration" policy, the Administrator believes that they are potentially so far-reaching that the question of how such a policy should be defined and implemented cannot properly be addressed, much less decided, on narrow legal grounds. Rather, it is a question that must be discussed, debated, and decided as a public policy issue, with full consideration of its economic and social implications. To approach the question in any other manner would be much too simplistic. There is, perhaps, no other environmental issue that imposes upon the Administrator, and the public, a greater obligation to formulate and objectively evaluate a range of possible solutions. The usual rulemaking procedure of putting forth a single proposal clearly is inadequate in this case. Accordingly, this notice sets forth four alternative sets of proposed regulations based upon different philosophies and administrative approaches to defining and preventing significant deterioration.

#### CURRENT CONSTRAINTS ON DETERIORATION

It is important to recognize that many State plans, as well as certain rule making actions already completed

under provisions of the Clean Air Act, will have the effect of attaining or maintaining air quality significantly better than the national secondary standards in many places, and that these actions will have the effect of generally improving air quality nationwide. The following paragraphs summarize the more significant of these actions, and there is no intent that the alternatives proposed herein should in any way mitigate the impact of these actions.

1. The Administrator has promulgated (36 FR 8186) national primary and secondary ambient air quality standards. In accordance with the Act, the primary standards were set at a level that provides an adequate margin of safety for protection of the public health, and secondary standards were set at a level that protects the public welfare from any known or anticipated adverse effects. All States have submitted implementation plans to attain and maintain these standards. In many areas of the country, air quality was not sufficient to meet these standards and, hence, in these areas, the State plans will ensure that deterioration cannot occur because the regulations require specific improvements in air quality.

2. Emission control actions to be taken by the States, in accordance with their plans to implement the National Ambient Air Quality Standards in heavily polluted areas, will reduce air pollution concentrations in the periphery of such [18987] areas. For example, the annual average sulfur dioxide concentration in Mercer County, New Jersey, is expected to drop from about 25 micrograms per cubic meter to about 10 micrograms per cubic meter (as compared to the national secondary standard of 60 micrograms) as a result of emission reductions in and around Philadelphia.

3. Emissions reductions to be achieved under State plans in major urban and industrial centers will significantly affect total national emissions and thereby lower the background pollutant concentrations in rural areas. Thus a 25 percent reduction in the background concentra-

tion of particulate matter (from about 40 micrograms per cubic meter to about 30 micrograms) in rural areas in the Northeast is anticipated.

4. Emission limitations and other regulations, including restrictions on the sulfur content of fossil fuels as prescribed by many State plans, go beyond what is minimally necessary for attainment of the national standards. In many instances, emission control regulations necessary for attainment of national standards in the most polluted area(s) of a State have been applied statewide. For sulfur dioxide, this has occurred in 33 States. Although implementation of these regulations may be deferred in some clean areas in order to make available low sulfur fuels for use in heavily polluted areas, these regulations will eventually result in further improvement in air quality in many areas where the secondary standards were not exceeded.

5. Federal emission standards for new motor vehicles will result in a steady decrease in motor vehicle emissions in all parts of the Nation through the 1970's and well into the 1980's, as new automobiles equipped to meet these emission standards replace older models which were subject to less restrictive emission standards or none at all. For example, 1974 model automobiles will have emission reductions (per mile) of approximately 80% for carbon monoxide, 70% for hydrocarbons, and 35% for oxides of nitrogen, as compared to vehicles sold prior to 1969. This trend is a result of the Federal emission standards already in effect; it will be accelerated by the even more stringent emission standards due to take effect in the 1975 and 1976 model years.

6. Control of sulfur dioxide, nitrogen oxides, and hydrocarbon emissions to meet national ambient air quality standards and/or Federal emission standards for new stationary sources and motor vehicles can be expected to inhibit atmospheric reactions involving these pollutants and

thereby reduce ambient air concentrations of particulate matter such as sulfates, nitrates, and organics. Current State implementation plans generally do not consider this secondary reduction of particulate levels.

It can be seen that there are very strong regulatory measures in existence to prevent any deterioration of air quality in regions where the national standards are currently exceeded. Strong regulatory measures also exist to insure that air quality in currently clean areas cannot deteriorate sufficiently to subject the public health or welfare to any currently quantifiable adverse effects. Although the effect of these regulations is to mitigate any deterioration in most sections of the country, the alternatives presented herein are intended to prevent, in accordance with the District Court's preliminary injunction, any significant deterioration of air quality in any portion of any State.

#### CONCEPTUAL ISSUES

Section 109 of the Clean Air Act requires the Administrator to establish national primary ambient air quality standards "to protect the public health" and national secondary ambient air quality standards, "to protect the public welfare from any known or anticipated adverse effects," including, as specified by section 302(h), "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being." Such national standards must be based on air quality criteria which, under section 108, must "reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health and welfare which may be expected from the presence [of air pollutants] in the ambient air, in varying quantities." Thus, standard-setting under section 109 is necessarily limited to demonstrable or predictable adverse



effects which can be quantitatively related to pollutant concentrations in the ambient air.

The basis for preventing significant deterioration therefore lies in a desire to protect aesthetic, scenic, and recreational values, particularly in rural areas, and in concern that some air pollutants may have adverse effects that have not been documented in such a way as to permit their consideration in the formulation of national ambient air quality standards. Pending the development of adequate scientific data on the kind and extent of adverse effects of air pollutant levels below the secondary standards, significant deterioration must necessarily be defined without a direct quantitative relationship to specific adverse effects on public health and welfare. It should be emphasized that defining significant deterioration in this way does not imply a judgment by EPA on the question of whether it is sound public policy to define "deterioration" as any increment above existing air pollution levels and to attempt to define "significant" deterioration in the absence of documentation on the adverse effects thereof. Furthermore, it is possible, indeed probable, that even when there are additional data, it will be evident that there are levels below which some of the pollutants covered by national standards do not have effects that can be considered adverse to public health and welfare.

To the extent that the Act provides any basis for defining significant deterioration, it does so only in section 101(b)(1), which declares that one of the purposes of the Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population". Additional guidance is available from the legislative history; specifically, the Report of the Senate Committee on Public Works (Report No. 91-1196, dated September 17, 1970) contained the following statement:

In areas where current air pollution levels are already equal to, or better than, the air quality goals, the Secretary should not approve any implementation plan which does not provide, to the maximum extent practicable, for the continued maintenance of such ambient air quality.

Though the Report also suggested that it might be possible to prevent all deterioration, it is apparent that the measures necessary for that purpose would bring growth and development virtually to a standstill in many areas and therefore are incompatible with protecting the "productive capacity" of the Nation's population.

Clearly, it is not within the province of EPA, under either the Clean Air Act or any other statute, to impose limitations on the Nation's growth. Neither the Sierra Club nor any of the States or organizations that filed amicus curiae briefs with the Supreme Court in support of the Sierra Club's position argued that the District Court's preliminary injunction means that EPA must limit economic growth, as such, in order to prevent significant deterioration of air quality. To the contrary, it was agreed that growth could and would continue, albeit with the restrictions necessary to prevent significant deterioration.

The Sierra Club, for example, made the following statement:

The development of rural areas will not be prevented by a prohibition against significant deterioration of air quality. Such a prohibition on its face does not prevent all increases in pollution. If the best available technological developments are utilized and if numerous pollution producing sources are not concentrated in one place, most industry can enter clean areas without causing significant deterioration. (p. 94)



And the State of California made the following statements:

Prevention of significant deterioration of air quality does not foreclose the construction in clean air basins and partially polluted air basins of well-planned and well-disbursed fossil fuel power plants and other polluting industries which utilize, on a continuing basis, the best available technology. 'No significant deterioration' simply means that certain large and inadequately controlled pollution sources will not be permitted. (pp. 1-2) Of course, economic and social factors may well require some degradation of air quality in certain areas. But this case does not involve any question of prohibiting growth or prohibiting *any* deterioration of air quality. It is not a 'non-degradation' case. (p. 28)

[18988] There is, therefore, a consensus that the definition of significant deterioration is intended to represent some level above zero deterioration. An upper bound can also be established on the definition of significant deterioration by recognizing that existing regulations prevent deterioration to levels in excess of the secondary air quality standards.

Hence, any quantitative definition of significant deterioration must fall between the levels of zero deterioration and deterioration up to the secondary standards. Any quantitative definition within this range must be essentially subjective, because, within this range, data are not available with which to quantify any adverse impact on either public health or welfare.

Nationally, the steady deterioration in air quality over the last several decades has already been reversed by existing regulations, and air quality generally has begun to improve in the last few years. Further, this improvement will continue for the foreseeable future. The following table summarizes the expected reductions in total na-

tional emissions by 1980. The percentages shown are based on the national emissions of 1970, and include (i.e. "absorb") the growth in sources anticipated for the 1970-1980 period.

Pollutant:	Percent Reduction in Emissions
Particulates .....	40
Sulfur Dioxide .....	70
Carbon Monoxide .....	80
Oxides of Nitrogen .....	40
Hydrocarbons .....	60

However, even though the nationwide trend in emissions and air quality is favorable, in many local areas which are now quite clean there is the possibility that deterioration could occur. This is because trends in the nationwide averages are predominately influenced by severe emission controls being applied in the large urban areas to attain and maintain the national ambient air quality standards. These controls could drive major polluters into the semi-urban and rural areas, thereby degrading air quality in those areas to a degree that could approach (but not exceed) the secondary standards. Additionally, the growth patterns throughout the country are continually changing, and the normal economic expansion can be expected to lead to increased emissions in some local areas which previously were undeveloped. In some of these areas, the public may feel that the improved economic conditions do not justify the resulting environmental deterioration, even though that deterioration is insufficient to cause a quantifiable adverse impact on either the health or welfare of the population.

However, the future nationwide reduction in emissions, and hence in pollutant concentrations, will be significant. Although much of this reduction is being accomplished in highly industrialized urban areas in order to attain and

maintain the national standards, a considerable reduction is also being accomplished in semi-urban areas already well below the standards. Depending upon the plan selected with which to prevent significant deterioration, much of this latter reduction could be used to accommodate future growth without significant deterioration. Further improvements in emission control technology would allow additional growth without causing significant deterioration. The proposed plans would serve to stimulate such improvements.

Nevertheless, it is not possible to rely solely on improved emission control technology to offset the increased emissions attendant to population and economic expansion and redistribution. Many areas of the country have virtually no man-made emissions. To establish a policy that new emissions can only be introduced to the extent that current emissions are reduced would forever relegate these areas to an essentially undeveloped status. This feature would, in turn, require that new pollution sources be located only in the semi-urban and urban areas of the country in which improved control technology would have the greatest impact. This would force the majority of the new emissions into these areas in which the majority of the Nation's population resides.

The relative significance of air quality versus economic growth may be a variable dependent upon regional conditions. For example, relatively minor deterioration of the aesthetic quality of the air may be very significant in a recreational area in which great pride (and economic development) is derived from the "clean air." Conversely, in areas with severe unemployment and little recreational value, the same level of deterioration might very well be considered "insignificant" in comparison to the favorable impact of new industrial growth with resultant employment and other economic opportunities. Accordingly, the definition of what constitutes significant deterioration must

be accomplished in a manner to minimize the imposition of inequitable regulations on different segments of the Nation.

Many States have expressed the desire that federal regulations be promulgated in a manner which would permit all States to prevent significant deterioration without placing any individual states in unfairly advantageous or disadvantageous positions for attracting new industry. It is therefore desirable to insure that industry is provided with no incentive to "shop" for areas in which efforts to prevent significant deterioration are deliberately relaxed. Because the competition for new industry is extremely keen among many States, this would require that the philosophy for preventing significant deterioration be enforced uniformly throughout the Nation, even though the definition of what constitutes significant deterioration could include regional variations.

The problem of preventing significant deterioration can be somewhat simplistically, stated as that of reducing emissions to the lowest practicable level, and then distributing those residual emissions in a manner in which they do the least harm. The four alternative plans discussed herein would accomplish this at requiring application of best available control technology to all new or significantly modified major sources regardless of any expected level of deterioration. In addition, each plan is based upon a different type of decision criterion which would be used to determine whether a proposed new or significantly modified source would be permitted to commence construction in any specific location. The four decision criteria would be based upon (1) definition of "significant deterioration" as a constant increment in air quality applicable nationwide, (2) definition of "significant deterioration" as the greater of either a percentage increase in emissions or an emission increment, (3) definition of "significant deterioration" on a case-by-case basis by the public in the



local area affected, and (4) definition of "significant deterioration" as one of two air quality increments depending upon land use projections by the State. Each of these plans are discussed in subsequent sections. However, all four plans contain several common features which are worthy of consolidated discussion.

#### POLLUTANTS SUBJECT TO DETERIORATION CONTROL

Each of the alternative proposals set forth below would require, as a minimum, that best available control technology be applied to certain categories of new sources of sulfur dioxide, particulate matter, carbon monoxide, hydrocarbons, and nitrogen oxides. Thus, this requirement would apply directly or, in the case of photochemical oxidants, indirectly to all pollutants covered by national ambient air quality standards.

The second basic requirement is a review to determine that individual new sources within the specified source categories will not cause significant deterioration. This requirement would be applied only to particulate matter and sulfur dioxide. The other pollutants covered by national standards are related primarily or substantially to motor vehicle emissions. As a result of the application of EPA's emissions standards for new motor vehicles, total motor vehicle emissions are decreasing and will continue decreasing well into the future. Accordingly, the purpose of preventing significant deterioration related to carbon monoxide, hydrocarbons, nitrogen oxides, and photochemical oxidants is in the Administrator's judgment, adequately served by the proposed additional requirement for applying best available technology to new stationary sources.

Furthermore, the formation of photochemical oxidants from hydrocarbons and nitrogen oxides and the formation of nitrogen dioxide from nitric oxides involve complex photochemical processes which are time-dependent and related to atmospheric conditions and the interaction of

emissions from a variety of sources. It is not possible to relate a specific isolated point source of hydrocarbons or nitrogen oxides to a specific [18989] ambient concentration of photochemical oxidants or nitrogen dioxide because the techniques and assumptions that permit correlation of emissions with ambient air quality in multiple-source areas generally are not valid for application to point sources in relatively clean areas.

#### SOURCES SUBJECT TO REVIEW

All the proposals set forth below would require preconstruction review of certain types of stationary sources. The proposed preconstruction review procedures are similar to those already required by State implementation plans. These procedures require that source owners or operators submit data to the State and apply for approval to construct, and that the State approves or disapproves the request based on specific criteria. In relation to air quality deterioration, the criteria for this "yes or no" decision are inherent in each plan proposed herein, and are described in the section on each plan.

The initial list of sources proposed for this specific review in each plan represents the Administrator's best judgment as to which sources, in and of themselves, have the potential for causing "significant deterioration" as defined by the four alternative plans. The proposed regulations contain sixteen source categories which currently account for approximately 30 percent of the particulate matter and 75 percent of the sulfur dioxide emitted into the atmosphere each year nationwide, and account for essentially all of these pollutants emitted in clean areas. The regulations also require that any other sources emitting more than 4000 tons of sulfur dioxide or particulate matter annually be subjected to this review.

It is important to note that under the three alternative plans which place a ceiling on pollutant concentrations or



emissions from an area, this initial list of sources will be subject to revision as an area approaches its ceiling.

The list of source categories has been restricted in the proposed regulations because it is considered unwise and unnecessary to divert available resources from other air pollution control activities in order to review new sources which do not have the potential to violate the proposed decision-making criteria. It may eventually be necessary to establish a mechanism for making advance assessments of the aggregate air quality impact of smaller sources. Such a mechanism is likely to involve projections of future growth and estimates of air quality impact, similar to those required by the recently promulgated amendments (38 FR 15834, dated June 18, 1973) to new source review requirements applicable to State implementation plans.

#### BEST AVAILABLE CONTROL TECHNOLOGY

Each of the plans proposed herein would require, as a minimum, application of "best available control technology" (BACT) to specified categories of new sources. The proposed regulations specify that control systems adequate to comply with new source performance standards (NSPS) promulgated under section 111 of the Clean Air Act generally will be considered BACT (with the exception noted below). The proposed regulations also specify that until such time as new source performance standards (NSPS) are promulgated, BACT for a particular source will be determined by considering: reasonably available control technology [as defined in Appendix B to the Administrator's regulations for the preparation, adoption, and submittal of state implementation plans (40 CFR Part 51)]; the processes, fuels, and raw materials to be employed by an affected source; the engineering aspects of the application of various types of control techniques, and the cost of employing the available control techniques, including hardware and alternative processes, fuels, and

raw materials. However, all specified sources are expected to be covered by NSPS within 18 to 24 months and, because NSPS generally represent the lowest practicable level of emissions, the attainment of NSPS will generally be compatible with application of BACT.

The proposed exception to this equivalency of NSPS to BACT exists with respect to sulfur dioxide emissions from fossil fuel-fired steam electric plants. The levels of emissions from these plants have an extremely wide range due to the varying amounts of sulfur in fuels available in different parts of the country. Current NSPS are set at a level which requires use of a control system on plants burning high sulfur coal. However, in some regions, coal with sulfur content low enough to meet the NSPS is readily available and would be used even in the absence of emission limitations. In these situations, use of the low sulfur regional coal with no additional efforts to control sulfur dioxide emissions would not automatically constitute application of BACT. This use of NSPS as a maximum emission limitation, with the possibility of requiring additional control on a case-by-case basis, is being proposed because the NSPS are designed for uniform application nationwide, whereas significant deterioration is essentially a local or regional issue. Therefore, each of the proposed regulations requires that a case-by-case analysis of fossil fuel-fired electric plants be conducted to determine if emissions can and should be further reduced.

Alternatively, control systems adequate to meet NSPS could be considered BACT in all cases where NSPS exist, including the case of fossil fuel-fired electric generating plants. Since NSPS are required to reflect "the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated," they could be considered to represent a sufficient degree

of emission control to prevent significant deterioration "to the maximum extent practicable," in all areas. This alternative definition of BACT is not specifically included in the proposed regulations but since it is arguably consistent with the District Court's preliminary injunction, it is described herein and specifically called to the attention of all interested parties so that there will be an adequate opportunity for public comment thereon.

#### BASLINE FOR MEASURING DETERIORATION

Most of the plans which have been considered for preventing significant deterioration require that an identifiable level of air quality or emissions be established as a baseline from which to measure deterioration. The three principal alternatives which have been considered are the level existing in 1970 (to correspond to passage of the Clean Air Act), the level existing in 1972 (to correspond to the litigation to which these proposals are related), and the level existing in 1973 (to correspond to these proposed regulations).

The use of 1970 as a nationwide baseline would present several practical problems. Foremost among these is that in the interim between 1970 and the current time, growth patterns have changed sufficiently that, although the nationwide air quality has improved substantially, in some (particularly non-urban) areas the air quality has already deteriorated—in some places to the extent that the deterioration could be considered significant under some alternative plans. The status of sources which have received prior authorization to construct in these areas would become questionable. Yet, it does not appear equitable to withdraw that authorization due to newly promulgated regulations. In many other areas, air quality could have improved so dramatically that use of 1970 as a baseline would render any deterioration regulations virtually meaningless.

In addition, the availability of air quality data from which to measure deterioration represents a severe problem. Generally, air monitoring has been most intensive in heavily polluted areas. There has been only scattered monitoring in relatively clean areas. However, it is in these relatively clean areas that the deterioration issue is most critical, and to effectively apply most deterioration plans it is essential that relatively precise baseline data be available. Even today, the precise air quality or emission levels in many of these areas are unknown, this problem is compounded if baseline requirements are extended into the past.

However, the use of 1973 as a baseline year is also impractical, because the baseline must be established upon data for an entire year. Since annual data for 1973 could not be made available in sufficient time for initial application of these regulations, the use of 1973 would require that all data be estimated.

For these reasons, those plans discussed herein which require establishment of a baseline air quality or emission level are developed around the measured or estimated data for 1972. This minimizes, but does not eliminate, the problems associated with lack of data. It also tends to minimize many inequities associated with use of prior year baselines. It does, however, retain the problem regarding treatment of new or modified sources which [18990] have already been approved for construction by the appropriate air pollution agency, but whose emissions and impact on air quality would not be included in the 1972 data base. Because it does not appear equitable to withdraw the construction approval from these sources, the 1972 baseline as defined in the proposed regulations consists of the measured or estimated air quality (or emissions) existing in 1972 as modified by the estimated impact of any source approved (prior to date of this proposal) for construction.



The selection of 1972 as the baseline year also introduces potential problems for a number of growth-oriented regions which improved their air quality in the period 1970-1972 to levels substantially superior to the national standards in anticipation of using that full increment to accommodate future economic expansion. The proposed regulations could substantially reduce that flexibility. The use of 1972 also tends to benefit those areas which were comparatively slow to implement emission reductions. These areas may now implement reductions in the future, and use the resulting air quality or emission increment for future economic expansion. Although this feature appears to penalize growth-oriented regions which implemented stringent controls to achieve air quality substantially superior to the national standards, the disadvantages of the alternative baseline concepts appear to be more significant. Hence, in all plans proposed herein requiring a baseline year, the year 1972 is used.

One or, possibly, some combination of the following four alternatives to prevent significant deterioration will be promulgated as Federal regulations to be enforced by the States until such time as each State possesses authority to enforce similar State regulations.

#### I. AIR QUALITY INCREMENT PLAN

This section discusses a plan to prevent significant deterioration by establishing, for nationwide application, a maximum allowable increment in air quality above the baseline air quality. It is based upon the premise that "significant" deterioration can be defined as a finite increment in air quality, and that the resulting quantitative definition is appropriate for all sections of the country regardless of socio-economic conditions, and regardless of the current level of air quality (so long as national ambient air quality standards or other limitations are not exceeded). In addition to establishing this allowable in-

crement, which is applicable to sulfur dioxide and particulate matter, the plan also incorporates the requirement common to all plans that all new or modified sources employ best available control technology.

Regulations which would implement this plan are proposed as the first set of alternative regulations in this notice. The regulations list the sixteen source categories for which deterioration review must be conducted, and also require the review of additional sources with potential emissions in excess of 4000 tons per year.

The definition of significant deterioration on which this plan is based consists of specific allowable increments to be added to the baseline air quality level. These increments are specified in the proposed regulations as:

For particulate matter:

10  $\mu\text{g}/\text{m}^3$  (annual average)

30  $\mu\text{g}/\text{m}^3$  (24 hour average)

For sulfur dioxide:

15  $\mu\text{g}/\text{m}^3$  (annual average)

100  $\mu\text{g}/\text{m}^3$  (24 hour average)

300  $\mu\text{g}/\text{m}^3$  (3 hour average)

The averaging times have been selected to be compatible with the existing secondary standards for these pollutants, and the times would be revised to be compatible with any revisions to the standards. This use of compatible time periods is necessary to insure maximum availability of baseline data, and also to facilitate incorporation of the deterioration review procedures into the existing new source review procedures.

Although there are no quantitative data to support the choice of any specific increment below the national standards, the increments proposed represent the Administrator's best judgment of increments which would prevent



significant deterioration of currently clean areas, and yet not totally prevent the economic development of selected areas if that development were in the public interest.

If this proposed regulation were implemented, it would limit future development to the level of light industrial and residential complexes, or a very small amount of heavy industry such as stringently controlled power plants. For example, a recently constructed large apartment complex (15,375 units) in New York City is estimated to increase the 3-hour  $\text{SO}_2$  concentration by  $70 \mu\text{g}/\text{m}^3$ . This type of development would be allowed. A single well controlled large (1000-1500 MW) coal fired power plant can be expected to increase 24-hour  $\text{SO}_2$  from 50 to  $200 \mu\text{g}/\text{m}^3$  depending on terrain conditions, the emission height and the dispersive characteristics of the atmosphere. The lower numbers represent typical values associated with construction in areas of good dispersion and relatively level terrain; a power plant of this type could be constructed to operate within the proposed criteria. The large increases represent plant construction in non-level terrain or areas of limited dispersion capability: If a plant were to locate in these areas a reduction in emissions beyond NSPS would be required. In general, most other types of sources would have a smaller impact on sulfur dioxide concentrations than a coal fired power plant and, if well controlled, could probably be constructed in most areas. However, in most areas if a source such as a power plant were constructed, the influence of emissions from this source would possibly raise the pollutant concentration over a large area (as great at 700 sq. miles) to a level which would be incompatible with any additional significant development.

The examples cited above assume that emission levels would be comparable to New Source Performance Standards. However, if a coal fired power plant used, for example, 80 percent efficient stack gas cleaning in addition to low sulfur (approximately 0.7 percent) coal, the 24-

hour  $\text{SO}_2$  increase could be limited to  $10-40 \mu\text{g}/\text{m}^3$ , thus permitting construction of several sources. This example further emphasizes that prevention of significant deterioration need not necessarily prevent significant economic development so long as major emphasis is placed on improving emission reduction techniques.

The proposed regulations for this plan would require that all applicable new or modified sources submit comprehensive data to the State describing the source, the type and amount of projected emissions, the type of controls planned, the impact that the new or modified source would have on air quality, and an estimate of the existing air quality in the vicinity of the source. This information would be used by the State, subject to the Administrator's approval, to determine if the source would exceed the allowable air quality or emission limitations and to insure that the source plans to apply best available control technology. Prior to making this determination, the State would be required to provide opportunity for public comment on all information available.

In addition, the proposed regulations require that, unless the State determines that there is already an adequate air quality monitoring network in the vicinity, the source install a minimum of two continuous air quality monitoring instruments, and one meteorological instrument in the areas of expected maximum concentration. This feature would assist in developing adequate air quality information for monitoring of the source's impact, and for analysis of the potential impact of proposed future sources to insure that the deterioration ceiling is not exceeded.

Unfortunately, the type of air quality data needed to accurately establish the baseline air quality is not currently available in many clean areas of the country. It would therefore become necessary to initially estimate this information by use of diffusion modeling and other appropriate techniques.

Despite the problems generated by lack of data in most very clean areas, this alternative has some generally desirable features. The increments proposed would not totally prevent economic development of all currently clean areas, but they would force large sources to employ increasingly effective control techniques, would provide the incentive for strong control technology research and development, would prevent construction in difficult terrain areas such as valleys or mountainous areas with poor dispersion characteristics, and would also prevent clustering of large sources with the potential for high localized pollutant concentrations.

The impact of this alternative on currently developed regions is more difficult to assess. As time progresses, improved control technology will cause significant [18991] improvements in the air quality of currently developed areas and these areas will therefore be capable of absorbing more new development than the currently clean areas. This plan would therefore cause currently clean areas to remain relatively clean, but only at the expense of forcing new sources back into the more highly developed and populated areas.

A basic problem of this plan is the land use implications implied with no provisions to insure that they are in the best interests of the public or compatible with public desires. Inherent in any plan with a single deterioration definition applied nationally is the arbitrarily equal treatment of all equally clean areas. It may not be wise to restrict the development of waste lands to the same degree that a scenic national park is restricted, particularly if that restriction forces additional air quality deterioration on the heavily populated regions of the nation.

## II. EMISSION LIMITATION PLAN

This section discusses an alternative plan to indirectly prevent significant deterioration of air quality by prevent-

ing significant increases in emissions. Although the correlation between emissions and air quality is often difficult to establish, control of emissions may result in the same effects as are intended by preventing significant deterioration of air quality. Although the national ambient air quality standards are intended to adequately protect the public health and welfare from adverse effects, there are suspected effects that may be related more closely to total atmospheric loading than to specific ambient concentrations. These effects include visibility reduction; reduction in solar radiation reaching the ground; acidification of rain, lakes, and streams; conversion of sulfurous and nitrogenous emissions into sulfates and nitrates; and increases in "background" concentrations. None of these effects have been quantified to the extent that a precise relationship between pollutant emissions, pollutant concentrations, and the degree of adverse effects can be stated. There is, however, at least a qualitative basis for the prevention of significant increases in the load of pollutants carried by the atmosphere.

Atmospheric loading is poorly indicated by ground level concentration measurement due to the influence of meteorological dispersion and source location. Emission density (regional emissions/regional area) is an excellent indicator of atmospheric loading. Furthermore, emission data are more readily available and easier to acquire than air quality distribution data. Thus, emission density is a relevant and practical measure of, and means of control for, types of ambient air deterioration not presently limited by ambient air quality standards.

The calculation of emission density requires the choice of an area over which emissions are to be averaged. The regulations proposed for this plan specify an Air Quality Control Region (AQCR) as this area. There are several reasons for this choice. The AQCR is an established geographical subdivision for purposes of air quality analysis.



Considerable data are available on this basis. Furthermore, an area of median AQCR size is necessary in order to provide the kind of development flexibility required with currently available technology. If the averaging area is too small, then no large source of source cluster could locate within it without violating the emission ceiling. A larger averaging area allows the location of a few such large sources because the total emission increase can be allocated to a small portion of the land (thus assuring that the remaining area will remain at low emission density).

It is recognized that AQCRs differ in size and that rigid adherence to the AQCR subdivision could lead to inequitable development opportunity; therefore it is anticipated that, if this proposal is promulgated, States would develop procedures to permit subdivision of large AQCRs and aggregation of small ones. This would also permit relatively pollution free portions of Priority I and II AQCRs to be included in the regions covered by this plan during the AQCR size adjustment process. As the proposed regulations are currently written, this plan would apply only to Priority IA and IIIAQCRs.

Given the size of an AQCR or averaging region, the baseline annual emissions of sulfur dioxide and particulate matter can be determined. A ceiling emission rate is then calculated by adding either 20% to the baseline emissions, or by calculating a ceiling based on emission density, whichever is larger. This establishes the emission limits for the region. Implementation of this plan would then consist of insuring that the total annual emissions from the region remained below the established emission ceiling.

The incremental increase is difficult to select due to a deficiency of relevant data and theory on the relationship between emission density, atmospheric loading, and the effects to be limited. The emission density factors included

in the proposed regulations are 10 tons/year/sq. mile for sulfur dioxide and 3 tons/year/sq. mile for particulates. No AQCR with sulfur dioxide emission densities below these has exhibited air quality poorer than secondary national standards. Particulate emission densities display no general correlation of this type. However, most relatively clean areas have man-made particulate emissions below this level. It should be noted, however, that sulfur dioxide emission densities as high as 200 tons/year/sq. mile may be compatible with Priority III status. The poor correlation between emission density and measured air quality is due to the effect of meteorological factors and source location, as mentioned earlier.

Given the size of the region the allowable emission density factor or percentage increase and the baseline emissions, the emission ceiling for each region can be calculated. The resulting ceilings apply to *all* emitters in the region. For practical reasons, only the large sources included in the proposed regulations must be given formal review, but the contributions of new and existing small sources to the total emissions must also be inventoried.

The regulations proposed for this plan would require each new or modified major source to provide information necessary for the determination of the probable emission rate, compliance with BACT, siting analysis under current new source review procedures, and for public information on which to base comments.

This plan would allow each region considerable flexibility on the selection and location of new emitting sources. The amount of new development possible under the emission ceiling depends critically on the degree of emission control applied to both new and existing sources. The ground level air quality at a given point in the region depends on the distribution of sources about that point. It is possible that the development of small residential and commercial sources could be limited because the avail-



able emission increment is used by a few large new emitters. It is also possible that ground level air quality could increase to secondary standards in one or more places due to large new sources or source clusters (although this would insure that air quality in the rest of the region would have no deterioration).

The determination of how emission density is to be distributed in each region would be the State's prerogative, and the Administrator would accept any distribution provided that the emission ceiling and national ambient air quality standards are observed. It is strongly recommended, however, that the allowable regional emissions be distributed in some rational and equitable manner so that the best available ground level air quality is maintained, development is balanced between industry, commerce, and residences, and that the review and approval of the sources specified in this regulation precludes the possibility that a few large sources usurp all of the available air resources of the region.

As an example of how this plan operates, assume that an AQCR of 10,000 square mile area has baseline emissions of 40,000 tons/year of sulfur dioxide. The applicable emission ceiling in this case would be 100,000 tons/year. Assume also that existing sources are expected to reduce emissions from 40,000 to 20,000 tons/year by 1980, and that small source growth is expected to equal 10,000 tons/year. The net available emissions through 1980 would amount to 70,000 tons/year. A coal fired power plant of 1,000 megawatt capacity which meets NSPS will emit about 50,000 tons of sulfur dioxide per year. Such a plant could be located in this AQCR, but it would use a large proportion of the available emission allowance. The State would have to balance its need for electricity against other anticipated emission increases to determine if such a power plant was desirable, [18992] if this type of plant was necessary, or if the emissions from the plant should be

reduced below NSPS by applying lower sulfur coal and/or more efficient stack gas cleaning equipment.

### III. LOCAL DEFINITION PLAN

One of the major problems in defining significant deterioration is that the level at which air quality deterioration becomes "significant" is essentially subjective, and is often logically dependent upon a large number of factors which vary from location to location. Accordingly, the proposed regulations supporting this alternative plan would ensure that the rate of deterioration is minimized in all areas and requires State decision-making, with public participation, on the question of whether the deterioration resulting from particular sources would be considered "significant." In order to accomplish this, the regulations incorporate the following four features:

All major new or modified sources would be required to incorporate Best Available Control Technology, as defined previously, thus insuring that deterioration by any major source is held to the lowest practicable minimum regardless of the air quality in the surrounding area.

Any proposed source would be required to submit detailed information to the State concerning the amount and type of emissions anticipated, and the projected impact of those emissions on the air quality in the surrounding areas. The requirement for this type of information is intended to insure that adequate information is available on which to base an objective assessment regarding the significance of any resulting deterioration. Although not specifically required by the proposed regulations, it is anticipated that in many cases the State or local agency would analyze this information in relation to other sources impacting on air quality in the area. This would permit identification of existing sources which could be candidates for additional emission control capable of minimizing or off-

setting the potential deterioration attributed to the proposed new source. In any event, the analysis of this type of information would insure that the decisions regarding the significance of any projected deterioration would be based upon the best information available.

The State would be required to make full disclosure of all pertinent information and solicit public participation in the determination of what constitutes significant deterioration. As a minimum, the State would serve public notice of the proposed construction or modification, would make full disclosure of source and State generated information, and would allow at least 30 days for public comment. However, the regulations for this alternative would not preclude the holding of public hearings if the proposal is of sufficient public interest. The intent of this requirement is to insure that the definition of significant deterioration is based upon all pertinent air quality data, the attitudes and goals of the affected population, and the socio-economic conditions and requirements of the affected area.

The State would then determine whether the source would create significant deterioration of air quality. The regulations would provide sufficient legal authority for all States to prohibit construction or modification which could result in significant deterioration of air quality, but pertinent information would also be submitted to the Environmental Protection Agency for review. The Administrator could disapprove the State's determination of what constitutes Best Available Control Technology, or could disapprove the procedures by which the determination of significant deterioration was made, but so long as the required procedures were followed the Administrator would not have authority to reverse the State's judgment of what constitutes significant deterioration in any specific location.

Under this alternative, sufficient information, procedures, and legal authority would be provided to make a

valid determination of what constitutes significant deterioration, in the view of the affected public, and to enforce the prevention of that deterioration regardless of any unique circumstances surrounding any individual case. However, sufficient safeguards would be included to insure that a State's determination that the resulting deterioration was not significant could not be used to circumvent other requirements dealing with National Ambient Air Quality Standards, New Source Performance Standards, State emission limitations, or any other legal requirements designed to protect the quality of the ambient air.

This approach has the major advantage that the governmental units and citizens most affected by decisions on maintenance of air quality would make those decisions, based upon conditions existing at that time, thereby ensuring that local requirements and preferences with regard to matters such as land use, economic development, and use of natural resources are taken into consideration. Thus, economic growth would not be arbitrarily restricted to conform to national views on nationwide deterioration, but, rather, would be subjected to State and local decisions as to the form, direction, extent, and distribution of such growth and as to the conditions to be imposed on the construction or modification of facilities which could have a significant impact on air quality.

A somewhat modified version of this plan is currently in restricted use in portions of several States. In these cases, the States have established extremely low ambient air quality standards for selected regions within their boundaries, in most cases to protect State parks, national forests, scenic vistas, etc. This is, of course, within the rights of all States, but many States do not currently have adequate legal authority to prevent construction or modification unless the national ambient air quality standards are threatened. It would, therefore, be necessary to promulgate Federal regulations of the type presented herein



to give all States the required legal authority until they can pass suitable State legislation.

Although this alternative is intuitively attractive for a variety of reasons, it is not without drawbacks. There is some justifiable concern that State and local agencies and populations could be subjected to undue pressure exerted by industries desirous of locating within a particular area, and that this pressure could cause definitions of "significant" which might not be in the best long-range interests of these populations. Additionally, the local definition plan uses what is essentially a "sliding baseline" in that deterioration is always measured relative to the current air quality. Hence, there is no control over the ultimate level of deterioration, which could progress in finite increments up to the level of the secondary standards. A final major disadvantage of this alternative is that the long range impact of deterioration is not completely restricted to the local area. The proposed regulations associated with this plan require public comment from within "the area significantly affected by the potential emissions." However, it is entirely possible that the cumulative effects of a large number of "growth-oriented" regions could have a significant impact on the air quality of neighboring "clean-air oriented" regions, and these neighboring regions would thereby lose control over their own environment. Although the feature that the State, rather than the local population, has final authority for the definition of significant tends to mitigate this concern, it nevertheless remains a problem which could lead to inequitable treatment of some areas.

#### IV. AREA CLASSIFICATION PLAN

One of the major problems associated with the previously discussed Air Quality Increment Plan involves the possible inequities resulting from establishment of a single air quality increment applicable nationwide. The fourth alternative proposed herein partially alleviates this prob-

lem by defining two nationwide air quality increments which would be applied to the appropriate areas of the State compatible with the long range growth patterns and development objectives associated with each of those areas. The application of this proposed alternative would be similar to that of the Air Quality Increment Plan except for the features noted herein.

The proposed regulations would require each State to identify each area of its territory as belonging to one of the two "zones" of allowable deterioration. The following table presents the proposed zones with their associated deterioration increments.

[18993]

PERMISSIBLE DETERIORATION INCREMENTS ( $\mu\text{g}/\text{m}^3$ )

	Particulate Matter		Sulfur Dioxide		
	Annual	24 Hour	Annual	24 Hour	3 Hour
Zone I....	5	15	2	5	25
Zone II...	10	30	15	100	300

Deterioration above the Zone II levels would constitute, in the Administrator's judgment, a significant deterioration in most areas of the country. This level is identical to that of the Air Quality Increment Plan and, as discussed under that Plan, would permit a reasonable amount of growth potential so long as well developed air pollution control strategies are applied. This increment would provide a strong incentive for improved control technology, would prevent construction of new sources in locations conducive to higher than normal ground level concentrations, would prevent clustering of major new sources, and would require that both new and existing sources employ increasingly effective control technology in order to maintain a reasonable growth capability for the region. The proposed regula-

tions specify that the Zone II criteria would become effective nationwide upon promulgation of these regulations.

Zone I represents an extremely stringent deterioration criteria, and application of this increment would prohibit the introduction of even one small fossil fuel fired power plant, municipal incinerator, medium apartment complex (assuming oil heating), or any other medium scale residential or commercial development using normal emission control techniques. However, this does not necessarily mean that development would be totally prohibited: It means only that new emissions would be permitted only to the degree that current emissions are reduced. Strong incentives are therefore inherent for improved emission control technology and introduction of low-pollution development. Although Zone I could be applied to a semi-urban or urban area in which it was desired to inhibit further development; it is anticipated that Zone I would normally be applied to those ultra-clean areas such as national and state forests and parks, and other recreational areas in which it is desired to maintain essentially no deterioration of air quality.

The regulations proposed in support of this plan also contain provisions for exceptions to the required deterioration increments in special circumstances. It could be in the public interest to permit some isolated areas a higher increment in circumstances under which the resulting deterioration would not be considered significant. Each of these cases would require public hearings in the areas involved, and would require specific approval by the Administrator. It is expected that these cases would exist infrequently, but they might occur due to the unusual availability of raw materials in the area; or in order to support comprehensive, long-range development plans; or to avoid the necessity for locating relatively pollution-prone industries near populated areas where a larger deterioration increment might be available. As further insurance that the State's request for an exception is justified, the administrator would consider

the extent to which the State has applied Zone I criteria as an expression of good faith efforts to comply with the intent of the proposed regulations.

The proposed regulations require that States accomplish initial zoning within six months from the date of promulgation of these regulations. Retention of the Zone II criteria in an area would be considered the norm, and the degree of public participation would be at the State's discretion. Assignment of Zone I would require that public hearings be held in the region affected due to the severe growth restrictions inherent in the Zone I criteria. If any State fails to submit the required plan, all areas of the State would remain under the Zone II criteria as assigned upon promulgation of these regulations.

Subsequent to submittal of the initial zoning plan, changes in the plan could be accomplished to accommodate changes in growth patterns and development plans; such proposed changes would be presented at public hearings in each of the affected areas.

It is important to note that the proposed regulations would not allow the Administrator to disapprove any assignment of zones made by the State so long as the required procedures are carried out. By requiring the establishment of these zones, and specifying the maximum allowable deterioration associated with each zone, it is not the Administrator's intention to establish how the land in any particular area should be used, nor to establish any particular relationship between current air quality and assigned zoning. Areas assigned to Zone I could retain an option for significant growth capability: The very stringent air quality criteria require only that any growth be restricted to a form which has a low air pollution potential. Use of the land is the prerogative of the State and local population, and hence complete flexibility is provided, consistent with prevention of significant deterioration as appropriate for each zone. In making the determinations necessary to implement



this alternative, the States would be encouraged to consider many factors, including but not limited to: growth projections and local land use plans; existing land use; location of raw materials and markets; and existing constraints on land use imposed by other State, local, and Federal requirements.

Unfortunately, as with the Air Quality Increment Plan, the type of air quality data needed to accurately establish the baseline air quality for this alternative is not currently available in many clean areas of the country. It would therefore become necessary to estimate this information by use of diffusion modeling and other appropriate techniques. To eventually alleviate these problems, the plan would establish additional air quality monitoring requirements around new major sources.

Despite the data availability problems, this alternative has some very attractive features. Unlike the other ceiling plans proposed herein, this plan ensures that future developmental patterns can be based on rational planning rather than on previous growth patterns which form the basis for most other ceiling approaches. This alternative also seems superior to the "local definition" plan, in that it is not based on case-by-case local projections of growth patterns which may not be desirable from an overall point of view, but requires that the State establish long range growth patterns and goals. In essence, this plan puts emphasis on longer range strategic planning as opposed to short range case-by-case decisions. The plan also gives States the flexibility needed to meet their long range growth goals without the imposition of arbitrary constraints.

This alternative also has some drawbacks. The proposed regulations require that the State make very difficult and comprehensive decisions impacting on land use in a tight time frame. The results of these State decisions would have far reaching implications on the future of many States. There are no firm criteria which a State may use to make

its decisions and as a result, the decisions would be somewhat subjective in nature. The required decisions also would force the States to exercise great care in establishing the boundaries between zones so that the effect of a source in a Zone II does not cause the air quality in a Zone I to increase more than allowed. This problem becomes more severe along State boundaries and would require cooperation among States. Nevertheless, of the available alternatives for preventing significant deterioration, this plan appears to be superior in many, if not all, respects.

#### OTHER PLANS OF INTEREST

Although the preceding plans (including variations and combinations of these) represent the more feasible alternatives for preventing significant deterioration, the Administrator has given a variety of other plans careful consideration. Two of the more interesting are based upon a volumetric emission density restriction, and application of an emission charge or penalty.

The application of a volumetric emission density restriction is the essential feature of a plan proposed by the Sierra Club. Under this plan, significant deterioration for most pollutants would be defined as either a small incremental increase, or a percentage increase in pollutant concentration, averaged either over that volume of air within one km of the source, or that ground level area within one km of the source, whichever gives the higher value. Although the impact of this criteria is highly dependent upon the instantaneous local meteorological conditions, the philosophy is essentially similar to that of more conventional air quality and emission limitation plans. [18994] The fundamental difference is that the Sierra Club plan considers an exceptionally small area (or volume) on which to base the deterioration criteria. This requires that, in order to restrict regional deterioration to reasonable levels, the allowable increment applied to the one km baseline area must

be very small. The result is that this plan would permit a large number of small sources to be uniformly distributed throughout the region, but would completely prohibit construction of conventional coal fired power plants and other major sources of the type listed in the proposed regulations, unless those sources were located in areas in which major improvements in air quality had been accomplished after the baseline level had been established. This feature would tend to drive all new major sources of air pollution into the more heavily populated sections of the country. This anomaly is the result of choosing too small an area (or volume) over which to average the emissions, and is no more a failure of the volumetric averaging technique than any technique in which emission density restrictions are applied to an excessively small area. Conversely, if too large an area is chosen, then the peak concentrations in a local area may become excessive even though total atmospheric loading is reduced. However, the volumetric averaging plan is not proposed herein primarily because the computation technique is unnecessarily complex and is only indirectly representative of the physical characteristics of pollution sources, the baseline data required (particularly for particulates) is largely nonexistent, the monitoring and control costs would be excessive, and simpler plans could be developed to achieve substantially the same results without the practical application problems inherent in the volumetric averaging concept.

A second type of plan containing interesting ramifications but which had to be rejected for practical reasons was one based on the imposition of emission charges. The general reasoning behind such a plan is that secondary NAAQS comprise adequate upper limits on pollutant concentrations, but air quality superior to those limits is desirable. The emission charge would provide a continuous incentive for sources to seek and apply emission controls to minimize their emission charges. The collective effect of these indi-

vidual cost minimizations would be to maintain air quality at levels superior to NAAQS in most areas. The level of air quality maintained would be a function of the emission charge rate, the development potential of the area, and the state-of-the-art of emission control.

The major advantages of this plan are that the cost of emitting would be "internalized", i.e., it would be taken into consideration in the normal economic appraisal of plant design and location alternatives. Sources would have numerous options as to control method, cost, and degree of control from which to make the optimum choice. The state-of-the-art of emission control would be continuously advanced. Finally, the means of enforcement would be charge collection for which there is ample precedent and experience.

Unfortunately, several problems attend such a plan, particularly in view of the requirement that "significant deterioration" be prevented in any portion of any State. If significant deterioration of air quality is to be prevented by the emission charge, some relationship between the charge rate and the resultant air quality must be found. Such a relationship is not presently available. Even if this relationship were available, the emission charge rate would have to vary from place to place to offset the variation in developmental potential offered by different land areas and the variable capacity of the air to disperse waste under different meteorological and topographical conditions. But most important, an emission charge would not guarantee that significant deterioration could not take place in some portions of some States. Consequently, the emission charge, while possessing some desirable attributes, does not appear to be a practical means of preventing significant deterioration of air quality.



#### PROBLEMS COMMON TO ALL DETERIORATION PLANS

**Jurisdictional Ambiguities**—There is a potential jurisdictional problem associated with all plans proposed to prevent significant deterioration. The problem could arise whenever a source in one State is degrading the air quality of a second State. The problem is compounded when small deterioration increments or ceilings are established because a relatively small external source may "use up" a large portion of the growth potential available to the neighboring regions. The region in question would have no apparent resource, and its own growth potential would thereby be curtailed. The recent court order has established the Administrator's authority to prevent significant deterioration regardless of the source's location, but the Administrator has no criteria by which he can dictate whether the allowable deterioration should be allocated to an internal or external source. Hence, in cases such as this, any allowable deterioration increment would have to be allocated on a "first come, first served" basis, regardless of the location of the source.

**De Facto Land Use Decisions**—It has been pointed out previously that all currently practical plans to prevent significant deterioration essentially impose restrictions on the use of the air resource, and hence, use of land. Depending upon the plan selected, these restrictions would be imposed by local, State, or Federal decisions. However, in all cases, there is a certain amount of flexibility inherent in the regulations regarding land use, and the States are encouraged to exploit this flexibility in order to make most effective use of the available resources. This exploitation is expected to take the form of State legislation permitting State determination of the type and amount of developmental growth authorized to "use" the allowable air quality increment. Complementary to enactment of this legislation would be long range planning actions to determine the type of growth desired, any constraints on this growth in addition to air quality deterioration constraints, and any additional means

for air quality improvements which might, in turn, make possible additional growth. In the absence of such State action, it can be anticipated that the allowable deterioration increment will be used up quite rapidly in many areas, and that this use would be made on a "first come—first served" basis without regard for the longer range requirements and goals of the region. In effect, Federal promulgation of any of the alternatives proposed herein will force States to develop and implement additional land use planning activities through which the available air resource can be allocated for the optimum purposes. These activities will be actively encouraged by the Administrator, and it is planned that eventually the prevention of significant deterioration will be accomplished solely through State Implementation Plan procedures, although such SIPs would have to be in accordance with Federal guidelines.

**The Impact of Urban Sprawl**—This problem refers to the characteristic trend of most urban areas to spread in to the surrounding countryside thereby creating gradual air quality deterioration due to residential heating and associated small but numerous sources of emission. There is no adequate deterioration plan which can automatically accommodate this deterioration, and yet urban sprawl can use up a large portion of any allowable deterioration increment. The periodic development of emission inventories, and routine air quality sampling, will track the effect of this sprawl, but it must also be projected into the future in order to insure that its impact, in addition to the impact of new major sources, does not violate the deterioration restrictions. For this reason, it may become desirable to include requirements for growth projections in the proposed regulations in a manner similar to those of the recently promulgated complex source regulations.

**The Impact of Fuel Switching**—Many sources have the capability to switch among various types of fuel—i.e., natural gas, low and high sulfur oil, low and high sulfur coal,

etc.—thus altering their emission levels. Although there is generally sufficient low sulfur fuel available, in conjunction with other emission reduction techniques, to attain and maintain the national standards nationwide, there is not currently sufficient fuel of this type (particularly low sulfur coal) to satisfy all potential users. Accordingly, it may become necessary for some sources in relatively clean areas to temporarily switch to higher sulfur fuel in order to make available additional low sulfur [18995] fuel for use in areas in which the ambient air quality could have an adverse impact on public health. Because pollutant emissions are approximately proportional to the sulfur content of the fuel (i.e., a switch from 1 percent to 3 percent sulfur coal would approximately triple sulfur oxides emissions) this procedure would tend to temporarily degrade air quality in clean areas. A preliminary review indicates that most plans to prevent deterioration could accommodate this temporary increase in emissions. However, it is conceivable that there may be unusual cases, as where a source might have to switch from natural gas to coal, which could not be accommodated within some proposed deterioration limits. The Administrator solicits all available information concerning cases of this type, and is interested in comments on the advisability of including variance procedures in the proposed regulations to accommodate temporary emission increases of this type.

**The Right of Regional Self-Sufficiency**—It is desirable that all participants in this rulemaking carefully consider the full impact of deterioration restrictions, particularly as they would influence relatively clean areas in which the allowable deterioration increments might be very small. Due impact to the threat to the NAAQS, most large urban areas can no longer provide enough electrical power to supply their own needs; their power must come from non-urban, relatively clean, areas. However, in the future it may develop that even non-urban areas will not be able to supply their own power needs due to the threat of significant de-

terioration. For example, Iowa can be considered as a typical agricultural State with only nominal heavy industry. It is estimated that by 1980, the rural areas of Iowa will require approximately 1,700 megawatts of additional power per year. The production of that power, with application of best available control technology and regionally available fuel, would produce approximately 160,000 tons of sulfur dioxide per year, or an approximately fifty percent increase in emissions over the 1970 levels for those areas. Any deterioration plan must consider factors such as these to insure that the impact on each individual region can be tolerated and is consistent with the public interest.

#### OPPORTUNITY FOR PUBLIC PARTICIPATION

The Administrator solicits widespread public involvement in all aspects of the significant deterioration issue, and interested individuals and groups are encouraged to actively participate in this rulemaking. In order to assist in the development of objective comments and debate, the Environmental Protection Agency's Office of Public Affairs and the Regional Offices will have available sets of technical documentation summarizing types and sizes of typical sources, typical emissions, estimated costs of emission controls, breakouts of total national emissions by type and type source, distribution of current emissions by AQCR, and associated data of value in assessing the impact of alternative deterioration plans. Copies of this information will be made available to the public upon request. Requestors should reference this issue of the *FEDERAL REGISTER*.

There are several questions on which EPA is particularly interested in receiving public comments and relevant data. One of the most important involves the concepts of "deterioration of air quality" and "significant deterioration of air quality." With respect to the term "deterioration," the question arises as to what type of change in ambient air quality represents "deterioration." With respect to "sig-



nificant deterioration," questions arise as to whether it should be interpreted in the absolute or relative sense, and whether it should be determined on a national, State, or regional basis. Attention is therefore expressly directed to, and public comment requested on, the questions of what might appropriately be considered "deterioration" and, further, what degree of deterioration might appropriately be considered "significant."

Other questions on which public comment and relevant data are particularly requested include: whether, if an Air Quality Increment Plan or Emission Limitation Plan is adopted, the specific increments or limitations proposed herein are appropriate to prevent significant deterioration without severely disrupting growth and development; whether it is necessary and appropriate to require application of best available control technology as a minimum requirement of any plan for preventing significant deterioration; and whether the proposed definition of best available technology is appropriate. EPA also requests information which would explicitly define the possible economic impact of each of the proposed alternatives. Finally, the fact that four alternatives are specifically presented does not preclude interested parties from offering others for consideration.

Public hearings on these proposals are scheduled as follows:

Washington, D.C.: August 27 and 28

Time and place to be announced.

Atlanta: September 4 and 5; 10:00 a.m.

Civic Center

395 Piedmont Avenue, N.E.

Dallas: September 5 and 6; 9:00 a.m.

Environmental Protection Agency

Suite 1000

Conference Rooms A and B

1600 Patterson Street

Denver: September 5 and 6; 9:00 a.m.

U.S. Post Office Auditorium

Room 269

1823 Stout Street

San Francisco: September 5 and 6; 9:00 a.m. to 5:00 p.m.

Hyatt Regency Hotel

Seacliff Room

Embarcadero Center

Written comments in triplicate may also be submitted to the Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attn: Mr. Padgett. All relevant comments received not later than 90 days after the date of publication of this notice will be considered. Receipt of comments will be acknowledged but substantive responses will not be provided. Comments received will be available for public inspection during normal business hours at the Office of Public Affairs, 401 M Street, SW., Washington, D.C. 20460.

These alternative amendments are being proposed pursuant to an order of the U.S. Court of Appeals for the District of Columbia Circuit in the case of Sierra Club, et al., v. Administrator of EPA, case No. 72-1528. This notice of proposed rulemaking is issued under the authority of section 301(a) of the Clean Air Act as amended (42 U.S.C. 1857, et seq.)

Dated: July 12, 1973.

ROBERT W. FRI,  
*Acting Administrator,*

*Environmental Protection Agency.*

Subpart A, Part 52, Chapter I, Title 40, Code of Federal Regulations, is proposed to be amended by adding to

§ 52.21.a new paragraph (b) and one of the paragraphs herein designated (c), (d), (e), and (f):

§ 52.21 **Significant deterioration of air quality.**

(a) Subsequent to May 31, 1972, the Administrator reviewed State implementation plans to determine whether or not the plans permit or prevent significant deterioration of air quality in any portion of any State where the existing air quality is better than one or more of the secondary standards. The review indicates that State plans generally do not contain regulations or procedures specifically addressed to this problem. Accordingly, all State plans are disapproved to the extent that such plans lack procedures or regulations for preventing significant deterioration of air quality in portions of States, where air quality is now better than the secondary standards. The disapproval applies to all States listed in Subparts B through DDD of this part. Nothing in this section shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part.

(b) For purposes of this section:

(1) The term "baseline air quality concentration" means the maximum air quality concentrations measured or estimated in an area in which the proposed source has a significant effect representative of the year 1972 plus the estimated increase in those concentrations caused by all sources granted approval for construction prior to the date of proposal of this section in the **FEDERAL REGISTER** but not operating during the year 1972.

(2) The term "baseline emissions" means the annual emissions for the year 1972 plus the estimated emissions from [18996] all sources granted approval for construction prior to the date of proposal of this section in the **FEDERAL REGISTER** but not operating during the year 1972.

(3) The term "potential emission rate" means the total weight rate at which sulfur dioxide or particulate matter, in the absence of any air cleaning device, would be emitted from a stationary source when such source is operated at its rated capacity. Total weight rates shall be those actually expected for a specified source but in the absence of such information, it shall be estimated on the basis of the emission factors specified in "Compilation of Air Pollution Emission Factors," Office of Air Programs Publication No. AP-42, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, February 1972.

(4) The term "air cleaning device" means any article, machine, equipment, or other contrivance, chemical or process, the use of which may eliminate, reduce or control the emission of air pollutants into the atmosphere.

(c) *Regulation for preventing significant deterioration of air quality through application of an air quality increment.* (1) This paragraph applies to sources identified below, the construction or modification of which is commenced after the date of proposal of this paragraph in the **FEDERAL REGISTER**.

(i) Any new or modified stationary source of a type listed below:

(a) Fossil-Fuel Fired Steam Electric Plants of more than 1000 million B.t.u. per hour heat input.

(b) Coal Cleaning Plants (thermal dryers).

(c) Kraft Pulp Mill Recovery Furnaces.

(d) Portland Cement Plants.

(e) Primary Zinc Smelters.

(f) Iron and Steel Mill Metallurgical Furnaces.

(g) Primary Aluminum Ore Reduction Plants.

(h) Primary Copper Smelters.



(i) Municipal Incinerators capable of charging more than 250 tons of refuse per day.

(j) Sulfuric Acid Plants.

(k) Petroleum Refineries.

(l) Lime Plants.

(m) Phosphate Rock Processing Plants.

(n) By-Product Coke Oven Batteries.

(o) Sulfur Recovery Plants.

(p) Carbon Black Plants (furnace process).

(ii) Any new or modified stationary source not identified in subdivision (i) of this subparagraph having a total annual potential emission rate on any premises equal to or greater than 4000 tons for any of the following pollutants.

(a) Particulate matter.

(b) Sulfur dioxide.

(c) Nitrogen oxides.

(d) Hydrocarbons.

(e) Carbon monoxide.

(2) No owner or operator shall commence construction or modification of a source to which this paragraph is applicable unless:

(i) The State in which the source is or will be located determines in accordance with this paragraph:

(a) That the effect on air quality of the source or modification of the source considered with the effect on air quality of existing, new or modified sources, will not cause the air quality to be increased above the baseline air quality concentration by more than any of the following:

(1)  $10 \mu\text{g}/\text{m}^3$  of particulate matter, annual geometric mean.

(2)  $30 \mu\text{g}/\text{m}^3$  of particulate matter, 24-hour maximum.

(3)  $15 \mu\text{g}/\text{m}^3$  of sulfur dioxide, annual arithmetic mean.

(4)  $100 \mu\text{g}/\text{m}^3$  of sulfur dioxide, 24-hour maximum.

(5)  $300 \mu\text{g}/\text{m}^3$  of sulfur dioxide, 3-hour maximum.

(b) That the source or modified portion of the source will be constructed and operated to employ best available control technology for minimizing emissions of particulate matter, sulfur dioxide, nitrogen oxides, hydrocarbons, and carbon monoxide.

(ii) The Administrator approves the State's determination under subdivision (i) of this subparagraph.

(3) In making the determinations required by subparagraph (2)(i) of this paragraph, the State shall, as a minimum, require the source to submit: Site information, plans, descriptions, specifications, and drawings showing the design of the source, calculations showing the nature and amount of emissions, a description of the manner in which the source will be operated and controlled, the cost of control, measurements or estimates of existing air quality levels, and the impact that the construction or modification will have on air quality levels and the air environment around the source.

(4)(i) In determining best available control technology, the following shall be considered:

(a) Reasonably available control technology as defined in Appendix B to Part 51 of this chapter,

(b) The process, fuels, and raw materials employed,

(c) The engineering aspects of the application of various types of control techniques,

(d) Process and fuel changes, and

(e) The cost of the application of the control techniques, process changes, alternative fuels, etc.

(ii) A system of control which is determined by the State and approved by the Administrator to be adequate to comply with standards of performance for new stationary sources under Part 60 of this chapter may be deemed to constitute best available control technology.

NOTE: Under the alternative definition of Best Available Control Technology, as set forth in the preamble, subdivision (iii) would be eliminated.

(iii) In the case of sources identified at subparagraph (1)(i)(a) of this paragraph, best available control technology for sulfur oxides shall consist, as a minimum, of a control strategy determined to be capable of complying with standards of performance for new stationary sources specified in Part 60 of this chapter. However, individual analysis of each new or modified source which considers the availability of fuel and the cost and efficiency of other or additional control strategies may result in additional control for individual plants.

(5) Subject to subdivision (x) of this subparagraph, the owner or operator of a source subject to the provisions of subparagraph (2) of this paragraph shall install, or cause to be installed, a minimum of two continuous ambient air quality monitoring instruments for sulfur dioxide and/or two intermittent ambient air quality monitoring instruments for particulate matter.

(i) The State shall specify which pollutant(s) the source shall monitor.

(ii) When source, meteorological and/or terrain conditions warrant, the State may require additional samplers above the minimum number specified in this paragraph.

(iii) Such systems shall include one site equipped to monitor wind speed and wind direction.

(iv) The instruments shall meet the performance and operating specifications of § 51.17(a)(1) of this chapter.

(v) The locations of such instruments shall be located in areas of expected maximum concentrations determined by meteorological diffusion modeling or best judgment.

(vi) The instruments shall be maintained, calibrated, and operated in accordance with the methods prescribed by the manufacturer of such instrument(s) and other procedures consistent with good engineering practice.

(vii) The owner or operator of the source subject to this paragraph shall maintain a record of all measurements required by this subparagraph. Measurement results shall be summarized monthly and reported to the State semiannually, and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1-June 30 and July 1-December 31, with the initial reporting period starting as indicated in subdivision (viii) of this subparagraph.

(viii) The continuous monitoring and recordkeeping requirements of this subparagraph shall become applicable 6 months after initial start-up of the source.

(ix) Information collected pursuant to this subparagraph shall be made available to the Administrator upon his request.

(x) The State may demonstrate to the Administrator that the existing air quality surveillance system in the area in which a source is to be constructed or modified meets the requirements of this subparagraph.

(6)(i) Prior to making the determinations required by subparagraph (2)(i) of this paragraph, the State shall provide opportunity for public comment on the information submitted by the owner or [18997] operator and on the State's analysis of the effect of such construction or modification on ambient air quality. Opportunity for public comment shall include, as a minimum:



(a) Availability for public inspection, in at least one location in the region affected, of the information submitted by the owner or operator, and the State or local agency's analysis of the effect on air quality,

(b) a 30-day period for submittal of public comment, and

(c) a notice by prominent advertisement in the region affected of the location of the source information and analysis specified in subparagraphs (2)(i), and (3) of this paragraph.

(ii) Within 90 days from an owner or operator's submission of the information required under subparagraph (3) of this paragraph, the State shall publicly announce and transmit in writing to the Administrator its determinations under subparagraph (2)(i) of this paragraph, together with:

(a) Copies of all information prepared by the State under subparagraph (2)(i) of this paragraph; (b) a copy of the public notices issued in conformity with subdivision (i) of this subparagraph and (c) a statement that the State has complied with the requirements of this paragraph.

(7)(i) The Administrator will notify the State of his determination and the reasons for any disagreement under subparagraph (2)(ii) of this paragraph no later than 25 days following the State's submission of the information required under subparagraph (6)(ii) of this paragraph.

(ii) The State will notify the owner or operator in writing of the approval or denial to construct or modify a source within 120 days of the owner or operator's submission of the information required under subparagraph (3) of this paragraph.

(8) The Administrator may cancel an approval to construct if the construction is not begun within two years from the date of issuance, or if during the construction, work is suspended for one year.

(9) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with all local, State, or Federal regulations which are part of the applicable plan.

(d) *Regulation for preventing significant deterioration of air quality through application of an emission ceiling.*

(1) This paragraph applies to sources identified below, the construction or modification of which is commenced in any Air Quality Control Region (AQCR) classified Priority Ia or III with respect to sulfur dioxide and/or particulate matter, after the date of proposal of this paragraph in the FEDERAL REGISTER.

(i) Any new or modified stationary source of a type listed below:

(a) Fossil-Fuel Fired Steam Electric Plants of more than 1000 million B.t.u. per hour heat input.

(b) Coal Cleaning Plants (thermal dryers).

(c) Kraft Pulp Mill Recovery Furnaces.

(d) Portland Cement Plants.

(e) Primary Zinc Smelters.

(f) Iron and Steel Mill Metallurgical Furnaces.

(g) Primary Aluminum Ore Reduction Plants.

(h) Primary Copper Smelters.

(i) Municipal Incinerators capable of charging more than 250 tons of refuse per day.

(j) Sulfuric Acid Plants.

(k) Petroleum Refineries.

- (l) Lime Plants.
- (m) Phosphate Rock Processing Plants.
- (n) By-Product Coke Oven Batteries.
- (o) Sulfur Recovery Plants.
- (p) Carbon Black Plants (furnace process).

(ii) Any new or modified stationary source not identified in subdivision (i) of this subparagraph having a total annual potential emission rate on any premises equal to or greater than 4000 tons for any of the following pollutants:

- (a) Particulate matter.
- (b) Sulfur dioxide.
- (c) Nitrogen oxides.
- (d) Hydrocarbons.
- (e) Carbon monoxide.

(2) No owner or operator shall commence construction or modification of a source to which this paragraph is applicable unless:

(i) The State in which the source is or will be located determines in accordance with this paragraph:

(a) That the source or modified portion of the source considered with the cumulative effect on emission levels of all existing, new or modified stationary sources will not cause the maximum allowable emissions as determined by subparagraph (9) of this paragraph to be exceeded.

(b) That the source or modified portion of the source will be constructed and operated to employ best available control technology for minimizing emissions of particulate matter, sulfur dioxide, nitrogen oxides, hydrocarbons, and carbon monoxide.

(ii) The Administrator approves the State's determination under subdivision (i) of this subparagraph.

(3) In making the determinations required by subparagraph (2)(i) of this paragraph, the State shall, as a minimum, require the source to submit: Site information, plans, descriptions, specifications, and drawings showing the design of the source, calculations showing the nature and amount of emissions, a description of the manner in which the source will be operated and controlled, and the cost of control.

(4)(i) In determining best available control technology, the following shall be considered:

(a) Reasonably available control technology as defined in Appendix B to Part 51 of this chapter,

(b) The process, fuels, and raw materials employed,

(c) The engineering aspects of the application of various types of control techniques,

(d) Process and fuel changes, and

(e) The cost of the application of the control techniques, process changes, alternative fuels, etc.

(ii) A system of control which is determined by the State and approved by the Administrator to be adequate to comply with standards of performance for new stationary sources under Part 60 of this chapter may be deemed to constitute best available control technology.

(iii) In the case of sources identified at subparagraph (1)(i)(a) of this paragraph, best available control technology for sulfur oxides shall consist, as a minimum, of a control strategy determined to be capable of complying with standards of performance for new stationary sources specified in Part 60 of this chapter. However, individual analysis of each new or modified source which considers the availability of fuel and the cost and efficiency of other or additional control strategies may result in additional control for individual plants.



NOTE: Under the alternative definition of Best Available Control Technology, as set forth in the preamble, subdivision (iii) would be eliminated.

(5)(i) Prior to making the determinations required by subparagraph (2)(i) of this paragraph, the State shall provide opportunity for public comment on the information submitted by the owner or operator and on the agency's review of such information. Opportunity for public comment shall include, as a minimum:

(a) Availability for public inspection, in at least one location in the region affected, of the information submitted by the owner or operator, and the State or local agency's analysis of such information,

(b) A 30-day period for submittal of public comment, and

(c) A notice by prominent advertisement in the region affected of the location of the source information and analysis specified in subparagraphs (2)(i), and (3) of this paragraph.

(ii) Within 60 days from an owner or operator's submission of the information required under subparagraph (3) of this paragraph, the State shall also publicly announce and transmit in writing to the Administrator its determinations under subparagraph (2)(i) of this paragraph, together with:

(a) A copy of the public hearing notices issued in conformity with subdivision (i) of this subparagraph and

(b) A statement that the State has complied with the requirements of this paragraph.

(6)(i) The Administrator will notify the State of his determination and reasons for any disagreement under subparagraph (2)(ii) of this paragraph no later than 25

days following the State's submission of the information required under subparagraph (5)(ii) of this paragraph. (ii) The State will notify the [18998] owner or operator in writing of the approval or denial to construct or modify a source within 90 days of an owner or operator's submission of the information required under subparagraph (3) of this paragraph.

(7) The Administrator may cancel an approval to construct if the construction is not begun within two years from the date of issuance, or if during the construction, work is suspended for one year.

(8) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with all local, State, or Federal regulations which are part of the applicable plan.

(9) The maximum allowable emissions for an Air Quality Control Region shall be the following:

(i) For particulate matter the product of the area (square miles) for an AQCR and 3 tons of particulate matter/year/square mile or 120 percent of the baseline emissions for particulate matter, whichever is greater.

(ii) For sulfur oxides the product of the area (square miles) of an AQCR and 10 tons of sulfur dioxide/year/square mile or 120 percent of the baseline emissions for sulfur dioxide, whichever is greater.

(10) The State shall make available to the Administrator upon his request:

(i) The baseline emission inventory for particulate matter and sulfur dioxide, and

(ii) An annually updated emission inventory for each affected AQCR for all pollutants to which this paragraph is applicable.

(e) *Regulation for preventing significant deterioration of air quality through a local definition of significant deterioration.* (1) This paragraph applies to sources identified below, the construction or modification of which is commenced after the date of proposal of this paragraph in the FEDERAL REGISTER.

(i) Any new or modified stationary source of a type listed below:

(a) Fossil-Fuel Fired Steam Electric Plants of more than 1000 million B.t.u. per hour heat input.

(b) Coal Cleaning Plants (thermal dryers).

(c) Kraft Pulp Mill Recovery Furnaces.

(d) Portland Cement Plants.

(e) Primary Zinc Smelters.

(f) Iron and Steel Mill Metallurgical Furnaces.

(g) Primary Aluminum Ore Reduction Plants.

(h) Primary Copper Smelters.

(i) Municipal Incinerators capable of charging more than 250 tons of refuse per day.

(j) Sulfuric Acid Plants.

(k) Petroleum Refineries.

(l) Lime Plants.

(m) Phosphate Rock Processing Plants.

(n) By-Product Coke Oven Batteries.

(o) Sulfur Recovery Plants.

(p) Carbon Black Plants (furnace process).

(ii) Any new or modified stationary source not identified in subdivision (i) of this subparagraph having a total annual potential emission rate on any premises equal

to or greater than 4000 tons for any of the following pollutants.

(a) Particulate matter.

(b) Sulfur dioxide.

(c) Nitrogen oxides.

(d) Hydrocarbons.

(e) Carbon monoxide.

(2) No owner or operator shall commence construction or modification of a source to which this paragraph is applicable unless:

(i) The State in which the source is or will be located determines in accordance with this paragraph:

(a) That the source or modified portion of the source will be constructed and operated to employ best available control technology for minimizing emissions of particulate matter, sulfur dioxide, nitrogen oxides, hydrocarbons, and carbon monoxide.

(b) That particulate matter and sulfur dioxide emissions from the source when controlled by best available control technology will not cause significant deterioration in air quality;

(ii) The Administrator approves the State's determination under subdivision (i)(a) of this subparagraph.

(iii) The Administrator approves the procedure employed by the State in making the determination required by subdivision (i)(b) of this subparagraph.

(3) No owner or operator shall operate a source to which this paragraph applies unless the emission control system determined to constitute best available control technology and approved by the Administrator under this paragraph is fully installed and properly functioning.



(4) No determination or approval under this paragraph shall relieve any source from compliance with any local, State or Federal requirement which is part of the implementation plan, including any standard of performance under Part 60 of this chapter.

(5)(i) In determining best available control technology, the following shall be considered:

(a) Reasonably available control technology as defined in Appendix B to Part 51 of this chapter,

(b) The process, fuels, and raw material employed,

(c) The engineering aspects of the application of various types of control techniques,

(d) Process and fuel changes, and

(e) The cost of the application of the control techniques, process changes, alternative fuels, etc.

(ii) Except as provided in subdivision (iii) of this subparagraph a system of control which is determined by the State and approved by the Administrator to be adequate to comply with standards of performance for new stationary sources under Part 60 of this chapter may be deemed to constitute best available control technology.

(iii) In the case of sources identified at subparagraph (1)(i)(a) of this paragraph, best available control technology for sulfur oxides shall consist, as a minimum, of a control strategy determined to be capable of complying with standards of performance for new stationary sources specified in Part 60 of this chapter. However, individual analysis of each new or modified source which considers the availability of fuel and the cost and efficiency of other or additional control strategies may result in additional control for individual plants.

NOTE: Under the alternative definition of Best Available Control Technology, as set forth in the preamble, subdivision (iii) would be eliminated.

(6) In making the determinations required by subparagraph (2)(i) of this paragraph, the State shall, as a minimum, require the source to submit: site information, plans, descriptions, specifications, and drawings showing the design of the source, calculations showing the nature and amount of emissions, a description of the manner in which the source will be operated and controlled, the cost of control, an estimate of existing air quality levels, and the impact that the construction or modification will have on air quality levels and the air environment around the source.

(7)(i) Prior to making the determinations required by subparagraph (2)(i) of this paragraph, the State shall provide opportunity for public comment on the information submitted by the owner or operator and on the agency's analysis of the effect of such construction or modification on ambient air quality. Opportunity for public comment shall include, as a minimum:

(a) Availability for public inspection, in at least one location in the region affected, of the information submitted by the owner or operator, and the State or local agency's analysis of the effect on air quality,

(b) A 30-day period for submittal of public comment, and

(c) A notice by prominent advertisement in the region affected of the location of the source information and analysis specified in subparagraphs (2)(i) and (3) of this paragraph.

(ii) Within 90 days from an owner or operator's submission of the information required under subparagraph (3) of this paragraph, the State shall also publicly announce and transmit in writing to the Administrator its determinations under subparagraph (2)(i) of this paragraph, together with: (a) copies of all information prepared by the State under subparagraph (2)(i) of this

paragraph; (b) a copy of the public notices issued in conformity with subdivision (i) of this subparagraph and (c) a statement that the State has complied with the requirements of this paragraph.

(8)(i) The Administrator will notify the State of his determination and reasons for any disagreement under subparagraph (2)(ii) of this paragraph no later than 25 days following the State's submission of the information required under subparagraph (6)(ii) of this paragraph.

(ii) The State will act within 120 days on an owner or operator's submission of [18999] the information required under subparagraph (6) of this paragraph and will notify the owner or operator in writing of the approval or denial to construct or modify a source.

(9) The Administrator may cancel an approval to construct if the construction is not begun within two years from the date of issuance, or if during the construction, work is suspended for one year.

(f) *Regulation for preventing significant deterioration of air quality through application of area classification.*

(1) This paragraph applies to sources identified below, the construction or modification of which is commenced after the date of proposal of this paragraph in the FEDERAL REGISTER.

(i) Any new or modified stationary source of a type listed below:

(a) Fossil-Fuel Fired Steam Electric Plants of more than 1000 million B.t.u. per hour heat input.

(b) Coal Cleaning Plants (thermal dryers).

(c) Kraft Pulp Mill Recovery Furnaces.

(d) Portland Cement Plants.

(e) Primary Zinc Smelters.

(f) Iron and Steel Mill Metallurgical Furnaces.

(g) Primary Aluminum Ore Reduction Plants.

(h) Primary Copper Smelters.

(i) Municipal Incinerators capable of charging more than 250 tons of refuse per day.

(j) Sulfuric Acid Plants.

(k) Petroleum Refineries.

(l) Lime Plants.

(m) Phosphate Rock Processing Plants.

(n) By-Product Coke Oven Batteries.

(o) Sulfur Recovery Plants.

(p) Carbon Black Plants (furnace process).

(ii) Any new or modified stationary source not identified in subdivision (i) of this subparagraph having a total annual potential emission rate on any premises equal to or greater than 4000 tons for any of the following pollutants:

(a) Particulate matter.

(b) Sulfur dioxide.

(c) Nitrogen oxides.

(d) Hydrocarbons.

(e) Carbon monoxide.

(2) For purposes of this paragraph areas of a State classified as Zone I or Zone II shall be limited to increases in pollutant concentrations shown below:



## AREA CLASSIFICATION

Pollutant	Zone I	Zone II
Particulate matter:		
Annual geometric mean .....	5	10
24-hour maximum .....	10	30
Sulfur dioxide:		
Annual arithmetic mean .....	2	15
24-hour maximum .....	5	100
3-hour maximum .....	25	300

(3)(i) All areas of all States are classified as Zone II as of the effective date of this regulation.

(ii) The State may, within six (6) months subsequent to the effective date of this regulation:

(a) Submit to the Administrator, after a public hearing has been held, a designation showing certain areas of the State which are classified Zone I.

(b) Submit for the Administrator's approval plans showing certain limited areas of the State which may be allowed to increase concentrations of particulate matter and sulfur dioxide up to the national ambient air quality standards provided that:

(1) Public hearings are held.

(2) Appropriate documentation is submitted to justify such a request. This documentation shall include an explanation of the special characteristics of the area which demonstrates why this area should be allowed to increase in concentration up to the national standard. This explanation shall include such materials as developmental plans, location of raw materials such as mineral deposits, markets, growth and economic projections. In addition, the State must demonstrate that they considered classifying

as Zone I areas of the State of recreational, ecological, and scenic value.

(4) No owner or operator shall commence construction or modification of a source to which this paragraph is applicable unless:

(i) The State in which the source is or will be located determines in accordance with this paragraph:

(a) That the effect on air quality concentrations of the source or modification considered with the effect on air quality concentrations of all other existing, new, and modified sources will not cause the baseline air quality concentration in any zone of the State to be increased above the limits shown in subparagraph (2) of this paragraph.

(b) That the source or modified portion of the source will be constructed and operated to employ best available control technology for minimizing emissions of particulate matter, sulfur dioxide, nitrogen oxides, hydrocarbons, and carbon monoxide.

(ii) The Administrator shall approve the State's determination under subdivision (i) of this paragraph.

(5) In making the determinations required by subparagraphs (4)(i) of this paragraph, the State shall, as a minimum, require the source to submit: Site information, plans, descriptions, specifications, and drawings showing the design of the source, calculations showing the nature and amount of emissions, a description of the manner in which the source will be operated and controlled, the cost of control, an estimate of existing air quality levels, and the impact that the construction or modification will have on air quality levels and the air environment around the source.

(6)(i) In determining best available control technology, the following shall be considered:

(a) Reasonably available control technology as defined in Appendix B to Part 51 of this chapter,

(b) The process, fuels, and raw materials employed,

(c) The engineering aspects of the application of various types of control techniques,

(d) Process and fuel changes, and

(e) The cost of the application of the control techniques process changes, alternative fuels, etc.

(ii) A system of control which is determined by the State and approved by the Administrator to be adequate to comply with standards of performance for new stationary sources under Part 60 of this chapter may be deemed to constitute best available control technology.

(iii) In the case of sources identified at subparagraph (1)(i)(a) of this paragraph, best available control technology for sulfur oxides shall consist, as a minimum, of a control strategy determined to be capable of complying with standards of performance for new stationary sources specified in Part 60 of this chapter. However, individual analysis of each new or modified source which considers the availability of fuel and the cost and efficiency of other or additional control strategies may result in additional control for individual plants.

NOTE: Under the alternative definition of Best Available Control Technology, as set forth in the preamble, subdivision (iii) would be eliminated.

(7) The owner or operator of a source subject to the provisions of subparagraph (4) of this paragraph shall install, or cause to be installed, a minimum of two continuous ambient air quality monitoring instruments for sulfur dioxide and/or two intermittent ambient air quality monitoring instruments for particulate matter.

(i) The State shall specify which pollutant(s) the source shall monitor.

(ii) When source, meteorological and/or terrain conditions warrant, the State may require additional samplers above the minimum number specified in this paragraph.

(iii) Such systems shall include one site equipped to monitor wind speed and wind direction.

(iv) The instruments shall meet the performance and operating specifications of § 51.17(a)(1) of this chapter.

(v) The locations of such instruments shall be located in areas of expected maximum concentrations determined by meteorological diffusion modeling or best judgment or in any other area specified by the State.

(vi) The instruments shall be maintained, calibrated, and operated in accordance with the methods prescribed by the manufacturer of such instrument(s) and other procedures consistent with good engineering practice.

(vii) The owner or operator of the source subject to this paragraph shall maintain a record of all measurements required by this subparagraph. Measurement results shall be summarized monthly and reported to the State semi-annually, and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1-June 30, July 1-December 31, with the [19000] initial reporting period starting as indicated in subdivision (viii) of this subparagraph.

(viii) The continuous monitoring and recordkeeping requirements of this subparagraph shall become applicable six months after initial start-up of the source.

(ix) Information collected pursuant to this subparagraph shall be made available to the Administrator upon his request.



(x) The State may demonstrate to the Administrator that the existing air quality surveillance system in the area in which the source is to be constructed or modified meets the requirements of this subparagraph.

(8)(i) Prior to making the determinations required by subparagraphs (4)(i) of this paragraph, the State shall provide opportunity for public comment on the information submitted by the owner or operator and on the agency's analysis of the effect of such construction or modification on ambient air quality. Opportunity for public comment shall include, as a minimum:

(a) Availability for public inspection, in at least one location in the region affected, of the information submitted by the owner or operator, and the State or local agency's analysis of the effect on air quality.

(b) A 30-day period for submittal of public comment, and

(c) A notice by prominent advertisement in the region affected of the location of the source information and analysis specified in subparagraph (4)(i) of this paragraph.

(ii) Within 90 days from an owner or operator's submission of the information required under subparagraph (5) of this paragraph, the State shall also publicly announce and transmit in writing to the Administrator its determination under subparagraph (4)(i) of this paragraph, together with:

(a) Copies of all information prepared by the State under subparagraph (4)(i) of this paragraph,

(b) A copy of the public notices issued in conformity with subdivision (i) of this subparagraph, and

(c) A statement that the State has complied with the requirements of this paragraph.

(9)(i) The Administrator will notify the State of his determination and reasons for any disagreement under subparagraph (4)(ii) of this paragraph no later than 25 days following the State's submission of the information required under subparagraph (8)(ii) of this paragraph. (ii) The State will notify the owner or operator in writing of the approval or denial to construct or modify a source within 120 days of the owner or operator's submission of the information required under subparagraph (5) of this paragraph.

(10) The Administrator may cancel an approval to construct if the construction is not begun within two years from the date of issuance, or if the construction work is suspended for one year.

(11) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with all local, State, or Federal regulations which are part of the applicable plan.

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[31000] \*

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## ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 254-4]

### APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

#### Prevention of Significant Air Quality Deterioration

On May 31, 1972 (37 FR 10842), the Administrator of the Environmental Protection Agency published initial approvals and disapprovals of State Implementation Plans submitted pursuant to section 110 of the Clean Air Act, as amended in 1970.

On November 9, 1972 (37 FR 23836), all State Implementation Plans were disapproved insofar as they failed to provide for the prevention of significant deterioration of existing air quality. This action was taken in response to a preliminary injunction issued by the District Court for the District of Columbia Circuit, which also required the Administrator to promulgate regulations as to any state plan which either permits the significant deterioration of air quality in any portion of any state, or fails to take the measures necessary to prevent such significant deterioration.

Accordingly, on July 16, 1973 (38 FR 18986), an initial notice of proposed rulemaking was published which set forth four alternative plans for preventing significant deterioration, and which solicited widespread public involve-

\* Bracketed numbers represent the page in the *Federal Register* upon which material following such a number can be found.

ment in all aspects of the significant deterioration issue. Public involvement was considered essential because the issue of what constitutes "significant" deterioration, and what measures should be employed to prevent such deterioration, must be resolved as a public policy issue with full recognition and consideration of its potential social and economic as well as environmental implications. This balancing of the social and economic considerations with the environmental implications is considered necessary to fulfill the mandate of the Clean Air Act to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the *productive capacity* of its population." (Emphasis added)

The specific regulations therein are a modification of the originally proposed area classification plan, and are being repropounded to focus attention and solicit comment on the detailed procedural and technical aspects prior to promulgation to correct the deficiencies in State Implementation Plans outlined in the disapproval notice on November 9, 1972. These regulations would be implemented by the States pursuant to the authority contained in the Clean Air Act, as amended. Under the Act the Administrator is authorized to implement and enforce the regulations in cases where States are unwilling to request or accept the delegated authority.

To facilitate development of State plans to implement the general policy set forth in these regulations, in the near future the Administrator intends to publish guidelines for the preparation, adoption, and submittal of State Implementation Plan provisions with respect to the prevention of significant deterioration (40 CFR 51). These additional guidelines will provide criteria for submission of State plans to prevent significant deterioration. The State plans need not be identical to the regulations proposed herein, but should be developed to accommodate more appropriately individual conditions and procedures unique



to specific State and local areas. States are urged to develop and submit individual plans as revisions to State Implementation Plans as soon as possible. When individual State Implementation Plan revisions are approved as adequate to prevent significant deterioration of air quality, the applicability of the regulations proposed herein will be withdrawn for that State.

#### ORIGINALLY PROPOSED ALTERNATIVES

In the July 16, 1973, notice of proposed rulemaking (38 FR 18986), the Administrator proposed four alternative plans to prevent significant deterioration of air quality. These plans were intended to define the range of reasonable approaches to the problem and stimulate discussion on appropriate courses of action. The four proposed alternative plans were:

*Air Quality Increment Plan*—This plan would have prevented significant deterioration of air quality through application of a single nationwide incremental increase in concentrations of total suspended particulate (TSP) and sulfur dioxide (SO<sub>2</sub>) over those levels which existed in 1972. The sizes of the increments were selected to balance reasonable economic growth with minimal environmental deterioration.

*Emission Limitation Plan*—This plan would have limited total emissions of TSP and SO<sub>2</sub> over a relatively large area and indirectly prevented the significant deterioration of air quality. This plan offered some flexibility to States to distribute emissions throughout the area over which the emissions were to be limited.

*Local Definition Plan*—This plan would have prevented significant deterioration by requiring local determination, on a case-by-case basis, of the significance of the air quality impact of major new sources. This plan recognized the variability between areas and called for a subjective de-

cision making procedure to be implemented at the local level.

*Area Classification Plan*—This plan called for the establishment of "zones" of different allowable incremental increases in TSP and SO<sub>2</sub>. "Zone I" allowed for a very small incremental increase which would permit almost no new heavy industrial growth using current technology. "Zone II" used the same increment as in the Air Quality Increment Plan and allowed for what the Administrator considered a reasonable mix of well planned and sited construction. The plan also included provisions wherein individual areas could experience deterioration up to the national standards. At the time of proposal the Administrator recognized that this plan appeared to be superior to the others.

All four proposed plans would have been implemented through a preconstruction review of sixteen specified source categories to determine whether or not these sources would cause a violation of the constraints of each plan. Also, each plan called for application of best available control technology on all new sources covered by the regulations.

#### ACTIVITIES SINCE PROPOSAL

The proposal to prevent significant deterioration of air quality has stimulated a considerable amount of interest throughout the country. To encourage a complete dialogue, the Administrator initiated several subsequent activities to evaluate more fully the broad range of social and economic implications involved. Among the principal activities undertaken were:

*Public Hearings*—Public hearings were held in Washington, D.C. on August 27, 28, and 29; in Atlanta, Georgia on September 4 and 5; in Dallas, Texas on September 5 and 6; in Denver, Colorado on September 5, 6, and 7; and

in San Francisco, California on September 5 and 6. Over 160 people made presentations at these hearings, and the hearing records are available for inspection at the Freedom of Information Office, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

*Public Comments*—A 90-day public comment period was conducted during which over 300 written comments were received. Many of these comments were quite detailed, and demonstrated a great deal of understanding and concern within both the private and industrial sectors. All public comments received are available for inspection at the Freedom of Information Office.

*Additional Consultations*—Because of their involvement with and special understanding of the difficult problems related to implementation of any policy to prevent significant deterioration of air quality, the Administrator and his staff have consulted with a variety of individuals and groups which have a special interest in, or knowledge of, the pertinent factors associated with these regulations. Included in these consultations have been State governors and their official representatives, mayors and their official representatives, representatives from local governmental agencies, members of Congress and Congressional staff members, State and local air pollution control officials, representatives of environmental groups, representatives of industry and commerce, and officials of other Federal agencies.

The Administrator feels that the outcome of these efforts has been to stimulate a complete, open and frank dialogue on all aspects of the issue of significant air quality deterioration. As stated in the proposed rulemaking, there is perhaps no other environmental issue that imposes [31001] upon the Administrator a greater obligation to develop fully all points of view and relevant facts. The review of public comments and hearing testimony, the

extensive consultations, and the many additional studies and analyses undertaken and evaluated have resulted in valuable information which has been used in formulating the regulations proposed herein.

These regulations are in the form of a proposal because, due to the lack of precise direction either in the Clean Air Act or in the Court order, the thrust of the initial proposals was to focus on the conceptual basis for regulations. The comments received on the proposed regulations therefore tended primarily to discuss conceptual issues such as the roles of federal and state/local governments, rather than detailed comments regarding implementation of the regulations. Accordingly, the Administrator feels that a reappraisal of the regulation enclosed herein is essential to properly explore all aspects of this issue and to focus more clearly on procedural and technical issues. The Administration has submitted for consideration an amendment to the Act which would eliminate this requirement. This amendment is pending before the Congress. Although EPA does not agree with this amendment, EPA urges that it be given the fullest consideration and proposes the present regulations at this time without any intent to delay or influence such full consideration. The proposal herein is necessary because the Court has ruled that the current Clean Air Act requires the Administrator to prevent significant deterioration, and this requirement must be met even though it is possible that Congress may provide additional guidance and/or legislative changes in the future.

#### CONCEPTUAL CONSIDERATIONS

In the notice of proposed rulemaking, attention was drawn to the fact that any plan to prevent significant deterioration of air quality might have a major influence on land use patterns in many areas of the country. The development of proper land use planning to ensure protection of the environment is one of the most important tasks



yet to be undertaken. Comprehensive land use planning is a complex process including many variables, only one of which is air quality. Development of land use plans in which air quality represents a single overriding criterion is not, in the Administrator's judgment, a desirable course of action for most areas. The regulations proposed below are therefore designed to inject consideration of air quality as one of many constraints on land use decisions, but not to mandate land use decisions based solely on air quality. In this regard, the "significance" of any air quality deterioration is defined in terms of the proper and desired use of an area as well as the magnitude of pollutant concentrations. The intent is not to restrict or prohibit economic growth, but rather to ensure that desirable growth is planned and managed in a manner which will minimize adverse impacts on the environment.

As was pointed out in the initial proposed rulemaking, determination of that level of deterioration which constitutes "significant" deterioration is basically a subjective decision, because the primary and secondary National Ambient Air Quality Standards are required to be protective of all known adverse effects on public health and welfare in a nationwide context. Response to the initial proposed rulemaking confirmed that consideration of varying social, economic, and environmental factors in different areas would result in varying definitions of what constitutes significant deterioration. None of the information received during the public comments period would enable the Administrator to justify any but a subjective method for defining when increases in the concentration of pollutants become "significant." Strong sentiment was expressed at public hearings, in written comments, and during consultations that States and localities should be given the maximum degree of flexibility in making judgments as to when increases in concentrations become "significant,"

because the judgments must be based on considerations which vary from locality to locality.

Stemming from concern over the impact of regulations to prevent significant deterioration on land use patterns, and the necessarily subjective nature of any determinations in this regard, the roles of Federal, State and local governments are very important. Any policy to prevent significant deterioration involves difficult questions regarding how the land in any area is to be used. Traditionally, these land use decisions have been considered the prerogative of local and State governments, and in the regulations promulgated herein, the primary opportunity for making these decisions is reserved for the States and local governments. The States, acting pursuant to federal regulations, would exercise the authority to prevent significant deterioration of air quality, and this authority could be delegated to the local level if desired. In the Administrator's judgment, this matter normally should not be handled at the Federal level, but should become a matter for discussion and decision making at a governmental level in close contact with the area. However, if States are unwilling to accept this delegation of authority, the Administrator is prepared to implement and enforce these regulations in order to prevent significant deterioration of air quality. Further, even in cases where States fully accept the delegated authority, the Administrator may review, within very narrow limits, certain decisions made pursuant to these regulations.

The Clean Air Act places primary responsibility for the prevention and control of air pollution on the States and local governments. Accordingly, several broad options are available to States in designating an agency to exercise the authority which would be exercised pursuant to these regulations. One option would be to place responsibility for these regulations in a State-level agency; another option would be to assign responsibility to appropriate units

of local government; a third would be to assign responsibility to a regional planning or multi-functional agency.

Because of the impact these regulations may have on land use, the Administrator encourages the States, wherever possible, to delegate substantial authority under these regulations to appropriate local governmental units. Such delegation should be subject to appropriate conditions (such as effective and coordinated review on the appropriate regional scale, citizen involvement, ultimate control by general purpose local governments, etc.). Additionally, the Administrator encourages States to allow local general purpose governments, subject to similar conditions, to request designation of a local government body as the reviewing authority. If a State chooses to exercise authority at the State level, the Administrator encourages States to consult with all effected local governmental units carrying out these regulations. However, the Administrator emphasizes that the ultimate responsibility for assuring successful implementation of these regulations would lie with the State; if a State cannot or does not desire to implement the regulations herein, the Administrator would perform or delegate these responsibilities.

Because of the many inherent interrelationships between State efforts to prevent significant deterioration of air quality under these regulations and other state activities related to planning for land use, development, and environmental quality, special efforts to enhance intergovernmental coordination must be effected in each state. The regulations require consultation between the agency designated by the Governor to implement this effort and other relevant agencies. If the unit designated is not an air pollution control agency, the designated unit must consult with the air pollution control agency; similarly, if the designated unit does not have continuing responsibilities for land use planning, it must consult with the appropriate state and/or local land use planning agencies. In this

context, "land use planning agency" is to be construed quite broadly to include economic development or regional planning entities whose activities and responsibilities are appropriate to the specific decisions being made under these regulations.

Furthermore, coordination among other planning procedures, requirements, and agencies is encouraged to the maximum extent possible, particularly with respect to designation or re-designation of areas under these regulations. In particular, the agency designated by the Governor in carrying out its area classification responsibility should ensure coordination with the following four processes as appropriate to the specific state/local setting:

An Air Quality Maintenance Plan and its decision-making procedures.

An areawide waste treatment management unit created under Section 208 of [31002] the Federal Water Pollution Control Act (FWPCA).

The A-95 Review Process.

The Environmental Impact Statement under the National Environmental Policy Act (or equivalent State requirement).

Many areas designated Class III under these regulations would have the potential to exceed national ambient air quality standards during the 1975-1985 period. This will require that they be designated Air Quality Maintenance Areas (AQMA's). In these areas coordination between implementation of these significant deterioration regulations and the Air Quality Maintenance Plan effort will be particularly important.

Section 208 of the FWPCA provides for designation of certain portions of a water basin as requiring areawide waste treatment management. These are areas having a water quality control problem that cannot be alleviated



without an areawide approach aimed at integrating controls over municipal and industrial waste water, storm sewer runoff, nonpoint source pollutants, land use, and growth. The 208 planning agency must be a representative organization whose membership includes but is not limited to elected officials of local governments having jurisdiction in the planning area. Activities of these agencies involve projections of land use and growth patterns and control over new growth as necessary to ensure attainment and maintenance of water quality standards. Their decisions may affect locations of the 19 source categories covered in these significant deterioration regulations. Concepts and approaches developed in such water planning/land use analyses should be related to appropriate decisions in the significant deterioration effort.

The review process established under Office of Management and Budget Circular No. A-95 provides a structure for coordinated planning by strengthening communication among different agencies and governmental levels. This review process has potentially wide applicability through State, regional, and metropolitan clearinghouses that administer the review and comment process. The A-95 process can be regarded as a step toward regional comprehensive planning. Although the A-95 process is required when Federal grants and funds are involved, it could be utilized as an appropriate structure for inter-governmental coordination during the area classification and reclassification phases of implementing these regulations.

Section 102(2)(c) of the National Environmental Policy Act of 1969 requires an Environmental Impact Statement (EIS) to be filed with the Council on Environmental Quality by Federal agencies proposing major projects. The relationship of the proposed action to land use plans, policies, and controls in the project area and how conflicts with Federal, State, and local land use have been resolved must be discussed. Although an EIS is only required with

respect to major Federal actions, some State laws impose similar requirements on private developments. Twelve States and Puerto Rico have adopted broad requirements for EIS's on State actions; similar requirements have been under consideration in another 21 States and the District of Columbia. State EIS requirements are, for the most part, modeled on section 102(2)(c) of NEPA. However, significant differences exist from State to State. Some apply EIS's to local, as well as to State agencies; some require EIS's for private actions for which a government permit is required. Federally required EIS's are coordinated through the appropriate State, regional, or metropolitan A-95 clearinghouses discussed above. The EIS process may be useful in State decisions on the merits of re-classifying an area.

#### TECHNICAL CONSIDERATIONS

*Potential Economic Impact.* The requirement to prevent significant deterioration does not mean that economic growth of undeveloped areas must be arbitrarily restricted. Several studies by EPA and other Federal agencies, and additional data contained in public comments, evaluated various aspects of the proposed plans. The studies were characterized by two basic approaches: analysis of impact in specific prototype regions, and analysis of impact on isolated new industrial and energy-related sources. Copies of the analyses and contract reports are available for public inspection at the EPA Freedom of Information Office.

Based on these studies, the Administrator has concluded that the restrictions on deterioration of air quality proposed for Class II areas in the regulations herein would be unlikely to prevent what, in the Administrator's judgment, represents most forms of normal growth and economic development, provided that reasonable siting practices and pollution control measures are employed. How-

ever, unusually high growth urban areas, and some large industrial operations, could be adversely impacted if constrained by the increment of the original Air Quality Increment Plan. In many areas, the limitations proposed under the original Emission Limitation Plan could adversely restrict economic growth: this restriction would be most severe for coal-fired power plants. However, it must be emphasized that results of analyses such as these are sensitive to the assumptions made as to individual site locations, facility configuration, meteorological conditions, etc., and changes in these assumptions for any specific analysis could result in major changes in the results.

Many public comments expressed concern that any regulations to prevent significant deterioration of air quality inherently must have a major adverse impact on all forms of growth and economic development, especially in regard to the development of energy-related sources. However, the available analyses have confirmed that the incremental increases in concentration allowed under the Air Quality Increment Plan (Similar to Class II in the regulations proposed herein) would not necessarily create this adverse impact under most conditions, although in the regulations proposed herein, the 3-hour increment for sulfur dioxide has been increased to ensure that it is no more stringent than the 24 hour increment for large point sources under most meteorological and terrain conditions.

Subsequent to the close of the formal comment period on the original proposal, concern was expressed by the Department of Commerce and the Federal Energy Administration regarding the appropriateness of the Class II increments, particularly to the extent that the Class II increments might restrict construction of new coal-fired power plants and other economic growth in Class II areas. The Class II increments have been established at a level such that, in the judgment of the Administrator, deterioration above that level would constitute a significant deteri-

oration in most areas of the country. With reference to coal-fired power plants, the increments would normally permit construction of new power plants with capacities ranging up to approximately 1000 megawatts, although there would be wide variations in the actual limiting capacity due to the wide variations in terrain and meteorological conditions. Because the average capacity of new coal-fired power plants is projected to be approximately 1000 megawatts (the average size of existing plants is approximately 300 megawatts) the Administrator continues to believe that the level of the Class II increments is appropriate: This level would require that new plants of greater than average capacity normally be located only in Class III areas. Further, typical coal gasification facilities, oil shale processing facilities, and petroleum refineries would not be expected individually to exceed the Class II increments in most areas. However, large concentrations of new industrial sources and large new pollution-prone facilities, particularly those which may lead to new development in the vicinity, would in many cases be permitted only in Class III areas under the regulations proposed herein. The Federal Energy Administration, the Department of Commerce and the Treasury Department have specifically suggested that the incremental levels set forth in the proposed regulations be doubled, and that doing so would still adequately protect Class II areas against significant deterioration. Due to the concern so expressed, the Administrator specifically solicits comments on the desirability of increasing the level of the Class II increments proposed herein.

The Department of Health, Education, and Welfare has expressed two major concerns about the enforcement of air quality levels more stringent than the existing primary and secondary ambient standards. First, it fears adverse health impacts if metropolitan areas which now exceed even the primary standards are delayed in their attain-



ment of those standards by their inability to shift pollution sources to outlying areas. Second, the Department is concerned that a disproportionate share of the costs and few [31003] of the benefits of the non-deterioration policy would accrue to persons of limited economic means and residential mobility. These persons would be particularly vulnerable to such adverse impacts as curtailed economic growth, altered urban and rural development trends, constrained national capacity to absorb anticipated population increases, and higher prices for energy and manufactured goods. These impacts could compound the difficulties faced by all levels of government in responding to the needs of the poor, the elderly, racial minorities, and persons otherwise disadvantaged. The Administrator recognizes the concern expressed by the Department of Health, Education, and Welfare that adverse impacts could accrue to persons of limited economic means and residential mobility. Specific comments are solicited on this issue, with emphasis on any factual data relative to the issue. However, it is emphasized that there is no feature in these proposed regulations which would authorize any delays in attainment of the national standards in any area, irrespective of how that area, or any other area, would be classified under these proposed regulations.

*Data Considerations.* The following information is based on data collected by EPA and supported by public comment. The background information to support these conclusions is available for inspection at the EPA Freedom of Information Office.

1. *Measurement Accuracy:* Although the federal reference method for suspended particulates is adequate for use in measuring the extremely small increments often associated with prevention of significant deterioration, the federal reference methods for other criteria pollutants at low (clean environment) concentrations suffer varying degrees of inadequacy in that the precision of the current

methods is not adequate to reliably distinguish between readings approaching the small increments proposed. For example, if a twenty-four hour reading for sulfur dioxide were  $100 \mu\text{g}/\text{m}^3$ , the actual twenty-four hour average can be expected to lie between  $53 \mu\text{g}/\text{m}^3$  and  $147 \mu\text{g}/\text{m}^3$ , which is comparable to the  $100 \mu\text{g}/\text{m}^3$  increment proposed in the Air Quality Increment Plan. Extensive modification of existing methods, or development of new measurement technology, would be required in order to precisely measure the increments as proposed. However, current instrumentation would be adequate to calibrate and improve current diffusion modeling techniques and to measure compliance with ambient air quality standards.

2. *Air Quality Data:* Monitoring data on suspended particulate concentrations are the only data extensive enough in clean areas to support meaningful analyses. The major conclusion which can be drawn from these data is that vast numbers of measurements would be required to precisely determine a baseline level, and then further extensive measurements would be required to establish any degree of deterioration from that level.

3. *Data Variability:* Normal random variations in pollutant concentration in clean areas, especially for particulate matter, are often of greater magnitude than the incremental increases proposed for use under the original Air Quality Increment Plan. For example, the 1968 maximum concentration at the Grand Canyon for particulates was  $126 \mu\text{g}/\text{m}^3$  and the annual average was  $31 \mu\text{g}/\text{m}^3$ . In 1969 the maximum concentration was  $32 \mu\text{g}/\text{m}^3$  and the annual average was  $17 \mu\text{g}/\text{m}^3$ . These differences were caused by random variations due primarily to normal meteorological factors, and exceed the allowable air quality increments proposed in the original Air Quality Increment Plan.

4. *Modeling and Simulation Accuracy:* Current diffusion modeling techniques, when uncalibrated and used in the

absence of baseline air quality data, can exhibit random errors as high as a factor of two for short term concentrations and a factor of 1.5 for annual averages when compared with known concentrations of pollutants. It should be noted that in assessing most average concentrations, particularly those resulting from multiple sources, significantly better accuracy can be obtained. However, this is not the type of application normally associated with the significant deterioration concept which calls for pre-construction review of individual new sources. It should also be noted, however, that data obtained from current diffusion modeling techniques, while not corresponding to actual conditions in the ambient air, do provide a consistent and reproducible guide which can be used in comparing the relative impact of a source.

Based on these factors concerning the reliability of available field instrumentation and the normal variability of air quality data, it is the Administrator's judgment that a measured incremental increase in concentration over a measured baseline normally cannot be used as the criterion in assessing the significance of a new facility's impact on air quality. However, the use of diffusion modeling as an indicator of a source's compatibility with the land use desires of an area is a valid use of such models.

Most public comments concurred that measured data should not be used as the sole criterion for assessing the incremental increase. Some comments have disputed it, but a review of studies cited in those comments has shown that the measurement methods employed in these studies are quite complex and expensive, and require highly skilled operators and subsequent detailed analysis. These procedures are not currently suitable for the type of widespread field use required to prevent significant deterioration on a nationwide basis.

## SUMMARY OF REGULATIONS

The regulations proposed herein represent a modification to the Area Classification Plan as proposed in 38 FR 18986. As proposed, the regulations incorporate four basic features:

1. Provisions are made whereby areas would be designated under three classifications: Class I applies to areas in which practically any change in air quality would be considered significant; Class II applies to areas in which deterioration normally accompanying moderate well-controlled growth would be considered insignificant; and Class III applies to those areas in which deterioration up to the national standards would be considered insignificant.

2. The impact of a proposed new source on the applicable "deterioration increment" would be assessed through conventional new source review procedures (i.e., a pre-construction review) applied to proposed facilities in nineteen specific major source categories. The impact of smaller sources and area sources would be included in the "deterioration increments" at the time of review for construction or expansion of one of the specified source categories.

3. The "deterioration" increments in Class I and II areas are firm ceilings which cannot be exceeded by any new major source. However, procedures are included so that areas, both large and small, can be reclassified to allow introduction of sources not compatible with the initial classification, in cases where it is determined that the resulting deterioration would not be "significant".

4. Although the determination of what constitutes "significant" deterioration is intended to be made by the State under these regulations, the Administrator retains review authority over certain State actions.

The regulations as proposed herein take the same general form as the proposed Area Classification Plan, and



in the subsequent discussion only the major changes are emphasized.

*Sources Subject to the Regulations.* The list of sources subject to review has been expanded to include three additional source types—fuel conversion plants (such as coal gasification and oil shale plants), primary lead smelters, and sintering plants. The requirement for review of all sources with potential emission rates in excess of 4,000 tons/year has been deleted because the requirement generally is superfluous.

It is important to note that in this type of approach it is not possible to conduct a pre-construction review of each small source (such as a private home), but rather to concentrate the effort on the important large sources. These regulations do not require pre-construction review of sources other than those specifically listed, but require that these large sources, for which pre-construction review will be carried out, consider the impact of small sources constructed since the effective date of these regulations in determining their incremental impact and comparing it to the allowable increment. This provision is not intended to restrict the activities of States in development of their own source lists for State plans to prevent significant deterioration.

The term "expanded source" has been defined in these regulations in order to avoid possible confusion with the more commonly used term "modified source". [31004] An expanded source is defined as one which intends to increase production through a major capital expenditure. This term deliberately excludes from review under these regulations any fossil fuel-fired electric power plant which increases emissions solely due to switching from a low sulfur to a higher sulfur content fuel. Fuel switching by power plants is being adequately handled under existing federal and state controls, and to impose additional federal controls on these plants would be inconsistent with the recently

enacted Energy Supply and Environmental Coordination Act.

The Energy Supply and Environmental Coordination Act of 1974 was not intended to resolve the significant deterioration issue. Nevertheless, it was intended to permit a mechanism by which EPA's Clean Fuels policy could be implemented to the extent that States agreed to do so. Accordingly, it would be inappropriate for these proposed regulations to inhibit fuel switching due to a federally imposed "Deterioration Increment," even though all States would have the opportunity to reclassify to a higher classification. It should be noted, however, that States generally do retain the option to inhibit or prevent fuel switching at their discretion.

In actual practice, the regulation proposed herein would permit a power plant which switches fuel to "use up" the entire available deterioration increment, and in some cases exceed the increment, thereby precluding introduction of other major sources in the area unless the area is reclassified.

*Area Classification Procedures.* The concept of classifying increases in air quality has been only slightly modified from the earlier proposal. The allowed incremental increases in Class I areas are identical to those in the proposed "Zone" I. The allowed increases in Class II areas are similar to those of the proposed "Zone" II. The 3-hour increment has been increased to insure that it is no more stringent than the 24-hour increment under most meteorological and terrain conditions. A Class III area has been specified to formalize the "exception" procedures of the proposed plan. The terminology has been changed from "zoning" to "classification" to avoid confusion with conventional zoning concepts. Under conventional practices, a zone is a relatively small area (e.g., a city block or portion of a county). An area classified

under the regulations herein initially would be a much larger area, often consisting of, as a minimum, several large counties. Initial classification of smaller individual areas does not appear feasible because the carryover of pollution from one small area to another could not be adequately controlled.

A Class I designation would involve those areas where almost no change from current air quality patterns is desired. Class II designation would indicate areas where moderate change is desirable but where stringent air quality constraints are nevertheless desired. Class III designation would indicate areas where major industrial or other growth is desired and where increases in concentrations up to the national standards would be insignificant. The basic purpose of this classification procedure would be to require a conscious decision, made publicly with public input, that the intention of the State and the desire of the local population is to provide for the general type of air quality implied by the classification.

The enclosed regulations would designate all areas of Class II effective upon promulgation. Individual States will have sufficient authority to redesignate any area without need for specific new State enabling legislation. Areas may be redesignated as Class I, II or III by the State (or Federal Land Managers or Indian governing bodies as appropriate), provided that at least one public hearing, at which facts relevant to the area's classification may be presented, is held in the area affected and the Administrator is provided with a summary of the information presented at the public hearing. These designations can be accomplished at any time, and can be modified subsequently by the State in the same manner they were set.

States would be encouraged to perform appropriate redesignations as soon as possible. The initial designation as Class II is intended to represent only a tentative de-

termination of what significant deterioration means in most areas, and is subject to a further determination—which only the States can appropriately make—concerning the economic and other factors that may justify a somewhat different level of deterioration as being “significant.”

The Administrator would normally approve any redesignation except in the following four cases: (1) where the required procedures were not followed; (2) where the decision was based on inaccurate technical data; (3) where the redesignation authority has arbitrarily and capriciously disregarded relevant environmental, social or economic considerations; or (4) where a State is unwilling to implement the new source review procedures specified in these regulations. There are no limits on how often an area can be redesignated.

For redesignations of Federal or Indian lands, the normal procedures for States would be modified to be consistent with divisions of authority among Federal, State and Indian governing bodies. Nothing in these regulations would convey authority to States over Federal or Indian lands where such authority is not already present in other statutes, but it is anticipated that cooperative procedures will be developed among interested parties to implement these regulations.

Areas should be considered for redesignation as Class I in cases where the location of any polluting industry within the area is inconsistent with current or planned uses for the area, or where it is desirable to protect the area from any further deterioration because it is one of exceptional scenic or recreational value or is ecologically fragile, or where no further major industrial growth is desired irrespective of the existing air quality.

Although the increments for Class II are larger than for Class I, the allowable deterioration associated with a



Class II designation is minor, and the Class II air quality increments are smaller than the random variations in air quality which are normally caused by natural (predominately meteorological) factors. These Class II increments are sufficiently small that they preclude introduction of certain major sources of air pollution, although they do not permit introductions of what the Administrator has determined generally represents a reasonable amount of well planned and controlled industry so long as the individual facilities are not unusually large, or are not clustered in one small area.

Areas should be considered for redesignation as Class III where they are intended to experience rapid and major industrial or commercial expansion (including areas in which extensive mineral development is desired), but only in cases where the resulting air quality deterioration would not be considered "significant". In many cases, areas (or portions of areas) which are redesignated as Class III can be expected to satisfy the criteria for designation as an Air Quality Maintenance Area. However, States must ensure that proper consideration is given to maintenance of the national standards in all areas, irrespective of the specific definition given to "significant" deterioration.

It is important to recognize that the area classifications do not necessarily imply current air quality levels or current land use patterns. Instead, the classifications imply the desired degree of change from current levels and patterns. Accordingly, Class III could be applied to a currently pristine area, and Class I could be applied to a less clean area.

The regulations are structured to permit very large areas to initially be redesignated uniformly. The desire for relatively small localities to depart from the general criteria of the surrounding area to allow construction of individual sources which could exceed the incremental in-

creases can be accommodated through the flexibility of the reclassification procedures.

These regulations do not impose new requirements on sources proposed for construction in areas designated as Class III. In these areas, the existing procedures for attainment and maintenance of national standards are intended to prevent "significant" deterioration. Since sources in Class III areas are not subject to review under these regulations, States should take care in their redesignation procedures to ensure that Class III areas are sized and situated in such a manner so as to prevent carryover into adjoining areas which are intended to be restricted to Class I or Class II increments.

*Source Review Procedures.* Introduction of specified new sources, or major expansion of existing sources, are prohibited in Class I and II areas unless: (1) Best Available Control Technology will be applied on those sources for which new source performance [31005] standards are not applicable, and (2) the applicable increments will not be exceeded. If the air quality impact of a new source plus the impact of all other developments since the date of promulgation is expected to exceed the incremental increase allowed by the area designation, the source must either be denied a permit to construct or, if it is determined that the resulting deterioration would be insignificant in view of the social and economic benefits of the source's construction, the area affected by the source's emissions may be redesignated to a higher numeric designation. Under no circumstances, regardless of the classification of the area, would the regulations permit the approval for construction of a source which may interfere with the attainment of maintenance of any national standard.

In the case where proposed Federal or Indian facilities require review under these regulations, the Administrator

will normally retain review responsibility and will consult with the State as appropriate.

*Procedures for Maintaining the Increment.* The regulations proposed herein specify 1973 air quality, with appropriate adjustments to account for sources approved or constructed prior to promulgation, as the baseline. It is necessary to use 1973 air quality data because later data are not yet available in complete form. However, the availability of actual baseline data in relatively clean areas is of secondary importance in these regulations. As discussed previously, current air quality measurements taken in clean areas show large random variations, and it is unclear how a measured baseline could be meaningful in view of these large random variations in background concentrations.

In actual practice, although the regulations do not specifically preclude the use of measured air quality as a method for assessing the available increment, it is anticipated that assessment of the available increment will normally be accomplished through an accounting procedure whereby modeling results for individual sources will be used to keep track of the available (or "unused") increment as sources and emissions are increased or decreased. Therefore, an accurately measured baseline is not an essential consideration in implementing these regulations although the concept is retained for use in those few situations where it may be desired.

It should be noted that the deterioration increment is conceptually applied to the air quality levels existing on the date of promulgation rather than to a level existing at some time in the past (e.g., 1970 or 1972) as was considered in the original proposal. The effect of prior control activities in the area does not constrain the options available for either restricting or encouraging economic growth: These considerations are incorporated in the sub-

jective decisions which must be made during the area classification deliberations.

*Air Quality Monitoring Requirements.* In the originally proposed plan, all new major sources were required to conduct air quality monitoring in their vicinity. This was an essential feature because the proposed plan required that accurate air quality information be available in order to assess the "significance" of subsequent sources.

Under the regulations proposed herein, there is no similar need for such precise air quality information, because the air quality assessment is based primarily upon pre-construction modeling results. Although additional air quality data are nearly always of value, there is no justification for requiring sources to conduct monitoring under these proposed regulations. Therefore, the monitoring requirement has been deleted.

It should be noted that the impacts of sources which are not subject to the review procedures are not necessarily reviewed unless a major source proposes to locate in the area. This feature is necessary because the impact of the very large numbers of very small sources could only be assessed by either modeling or air quality measurement. To model each individual source during an individual pre-construction review would be an extremely laborious task, and the end result would be of questionable accuracy. If air quality measurement were attempted the combination of measurement inaccuracies and random variability in background concentrations would normally mask the effects of the sources of interest. Therefore, the regulations consider the air quality impact of relatively small sources only in conjunction with the impact of large sources which are proposed for construction.

*Best Available Control Technology.* In the original proposal, two alternative definitions of Best Available Control Technology (BACT) were discussed. Under both



alternatives, a case-by-case review to determine BACT was required of each source for which new source performance standards were not applicable. Under the first alternative, the attainment of NSPS was determined to be equivalent to application of BACT for all sources except for sulfur dioxide emissions from fossil fuel-fired steam electric power plants; for these plants a case-by-case review was required to determine if emissions could be reduced to below NSPS. Under the second alternative, fossil fuel-fired steam electric power plants were treated like all other sources for which NSPS are applicable.

In the regulations proposed herein, the second alternative is incorporated: power plants would not be subjected to the special BACT review because requiring such a review might arguably be inconsistent with the Congressional intent of requiring national standards of performance for new sources. Further, the requirement for application of BACT for control of hydrocarbons, oxides of nitrogen, and carbon monoxide has also been deleted because this requirement was inconsistent with the restriction (explained below) of these regulations to particulate matter and sulfur dioxide.

*Procedures for Resolving Jurisdictional Disputes.* In the notice of proposed rule-making, it was noted that the regulations could result in inequitable growth potential along State boundaries because a source approved for construction in one State could "use up" much or all of the growth potential of another. The transport of pollutants across State lines was a major issue raised by the States which filed amicus curiae briefs in the original litigation.

The regulations herein would require that a State notify an adjacent State at any time that it is reviewing a proposed source which could affect air quality in the adjacent State. It is anticipated that States will arrange bilateral and multilateral procedures to resolve differences. It is

not appropriate to place the Administrator in the role of arbitrator in interstate disputes because he would have no criteria on which to base his decisions. The Environmental Protection Agency can and will provide technical assistance and make findings of fact; but, if the differences cannot be resolved, relief should be sought through the courts. The 1972 Supreme Court decision in *Illinois vs. City of Milwaukee* may provide a particularly effective mechanism for resolving such interstate differences. The court held that the Federal District Courts would apply a Federal "common law", based on equitable "nuisance" principles, to require one State to terminate unreasonable pollution affecting another.

*Effective Date for Source Review.* The initial proposals stated that the regulations would be effective as of the date of initial proposal. It has become apparent that such a date would place an inequitable burden on sources which had commenced construction during the period from July 16, 1973 (the date of initial proposal) to the actual promulgation, because during that time these sources have had no knowledge regarding which of the alternative plans would be promulgated, and hence have had no knowledge of the criteria which would be imposed.

The regulations herein would be effective upon promulgation, but apply only to sources for which construction or expansion is commenced after six months subsequent to the date of promulgation. For these regulations, "commenced" is given the same definition as in 40 CFR 60 concerning applicability of New Source Performance Standards.

The intent of this provision is to avoid severe disruption of sources which are in the final planning and review process at the time of promulgation. If the regulations were applied to these sources they would be required, in many cases, to re-plan and re-enter the review process to comply with the significant deterioration criteria, and it

is considered unlikely that any major environmental benefits would be gained. Additionally, the regulations require rather extensive review procedures to be developed either by the States or by EPA, and the requirement to delegate the Administrator's authority to those States which are willing to implement these regulations directly will also require time. Accordingly, the six-month time period is intended to allow [31006] sufficient time to initiate and develop adequate review procedures, and actually accomplish the necessary review, without imposing a moratorium on construction of new sources.

#### DISCUSSION OF ADDITIONAL PUBLIC COMMENTS

Substantial public comment was received suggesting that the proper course of action would be to request legislative relief from the Congress, i.e., remove from the Clean Air Act the basis for the Court's finding of a requirement to prevent significant deterioration of air quality. Congressional debate and consideration of this issue is currently underway, and will continue; however, the Courts have ordered the Administrator to prevent significant deterioration under the Clean Air Act as presently enacted, and the regulations proposed herein are intended to accomplish that objective in a manner which is in the best interest of the public.

Substantial public comment was also received indicating that additional pollutants (specifically the "automotive pollutants") should be included in the regulations. After careful consideration of the arguments, the Administrator has concluded that ongoing programs are adequate to prevent any significant deterioration due to sources of carbon monoxide, hydrocarbons or nitrogen oxides for the following reasons:

First, the Federal Motor Vehicle Emission Standards are expected to result in sizeable reductions in emissions of

those pollutants on an area-wide basis for many years into the future.

Second, a basic requirement for sources under the enclosed concept is the application of Best Available Control Technology (BACT). This level of technology is already required on automobiles in order to comply with the Motor Vehicle Emission Standards, and further actual area-wide emission reductions under the enclosed regulations would be impractical.

Third, carbon monoxide has no identifiable or noticeable effects at concentration levels below the current standards. Unlike TSP and SO<sub>2</sub>, it has no observable esthetic impact. Since there are no suspected effects at levels below the standards, it is not reasonable to consider those levels to be "significant."

Fourth, hydrocarbons and oxides of nitrogen are precursors to photochemical oxidants and nitrogen dioxide, but the transformation from the former to the latter takes place over a relatively long time period. It is possible for local concentrations of vehicular activity to result in increased localized emissions of hydrocarbons and oxides of nitrogen, but by the time these emissions are transformed into photochemical oxidants and nitrogen dioxide, the resultant pollutants would be dispersed over a wide area. The motor vehicle emission standards are intended to reduce area-wide concentrations of these pollutants, and no areawide significant deterioration is expected to result from localized increased vehicular activity [i.e., the effect of areawide emission reductions would overwhelm any effect of localized emission increases except as already provided for in the indirect source regulations (38 FR 15836, 39 FR 7270)]. Further, the source-receptor relationship of these pollutants is difficult to define in other than highly urbanized areas, particularly when only a single isolated source is involved, and hence the procedures appropriate



for analysis of  $\text{SO}_2$  and TSP would be inappropriate for analysis of hydrocarbons and oxides of nitrogen. However, it may become desirable to control deterioration due to these pollutants, as well as due to possible additional pollutants for which national standards might be set in the future: If this occurs, appropriate revisions to these regulations would be made.

*Other Plans Proposed.* Some of the public comments received contained alternative proposals by which significant deterioration could be defined and prevented. Most of these proposals were relatively minor variations on one or more of the four proposed alternatives. However, a few groups developed comprehensive plans which differed in concept from the plans proposed by the Administrator.

1. *The Sierra Club Plan.*—The Sierra Club and many other environmental groups advocated a volume averaging approach in which concentrations of pollutants are limited not by ground level measurements, but rather by an average concentration through a spherical space measured within a one kilometer radius from the top of the stack. This plan represents an entirely different concept from the approach used for attainment and maintenance of ambient air quality standards and would require implementation of a unique set of procedures.

As discussed in preceding sections, current air quality monitoring techniques are marginally accurate at low ground level concentrations. The monitoring required by the Sierra Club plan is even less precise, requiring instrumented aircraft and remote sensing devices which are currently of very limited availability. The diffusion modeling required by the proposal in very clean areas is relatively simple. However, in multiple source areas where it would be desired to take into account emissions from existing sources, the capability does not exist to perform the type of modeling required.

In addition to the difficulties of implementing a volume averaging plan such as proposed by the Sierra Club, the economic impact of the Sierra Club plan would be extremely severe. The type of control technology assumed by the plan's authors is not generally available, and will not be available in the near future. Use of the Sierra Club plan would greatly inhibit increased utilization of U.S. coal reserves and could possibly, through restrictions on emissions of oxides of nitrogen, essentially preclude the use of fossil fuel for power production in large new sources. However, irrespective of the potentially adverse impact of this plan on the Nation's welfare, the plan contains a major conceptual problem: that is, if implemented, the plan would force the use of air pollution considerations as the single overriding factor in land use decisions, with no provisions allowed for other environmental, social, or economic considerations.

2. *The NRDC Plan.*—The Natural Resources Defense Council (NRDC) proposed a per capita emission plan. Under this plan the total emissions in clean areas, plus a five percent increase, would be divided by the total population in clean areas to arrive at the allowed per capita emissions. The total emissions allowed in any area would then be calculated as (the population in the area) times (the per capital emission rate). The primary advantages claimed for this proposal are the emphasis on emissions rather than air quality, and the relationship between the level of emissions and the population served. The latter advantage cited by NRDC would in many cases represent a major disadvantage. Because part of the motivation to prevent significant deterioration is concern for currently unquantified but suspected low level effects, it does not seem reasonable to force new polluting development to locate in areas of high population.

This plan would tend to prevent development of currently needed natural resources such as low sulfur coal and

oil shale which are located in areas of very low population. In addition, the location of many other facilities such as smelters, paper mills, phosphate rock processing, and oil shale retorting are determined by the location of natural resources, not by the population served. Under the per capita emission plan it is unlikely that facilities such as these could be built.

The Administrator has given careful consideration to all of the advice, comments, and suggestions which have been offered in support of this rulemaking activity and recognizes and appreciates the time and effort which has been expended by a large number of organizations and individuals. This extensive public participation has been of inestimable value in the development of the regulations which are proposed herein.

There are several questions on which EPA is particularly interested in receiving public comments and relevant data. These include the adequacy of State and local resources to implement the regulations, the interface of these proposed requirements on State and local governments with other Federal and State programs such as the Rural Development Act, and the appropriateness of the air quality increments associated with Class II areas.

Written comments in triplicate may be submitted to the Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attn. Mr. Padgett. All relevant comments received not later than September 26, 1974 will be considered, and receipt of comments will be acknowledged. Comments received will be available for public inspection during normal business hours at the Office of Public Affairs, 401 M St., S.W., Washington, D.C. 20460.

These regulations are being proposed pursuant to an order of the U.S. District Court for the District of Columbia Circuit in the case of *Sierra Club et al, vs. Administrator of*

EPA, issued May 30, 1973, case number 72-1528 (344 F. Supp. 253). This notice of proposed rulemaking is issued under the authority of section 301(a) of the Clean Air Act as amended [42 U.S.C. 1857g(a)].

Dated: August 15, 1974.

JOHN QUARLES,  
Acting Administrator.

Subpart A, Part 52, Chapter I, Title 40, Code of Federal Regulations, is proposed to be amended as follows:

Section 52.21 is revised by designating the first paragraph (a) and adding paragraphs (b), (c), (d), (e), and (f) to read as follows:

52.21 *Significant deterioration of air quality.*

(a) *Plan Disapproval.* Subsequent to May 31, 1972, the Administrator reviewed State implementation plans to determine whether or not the plans permit or prevent significant deterioration of air quality in any portion of any State where the existing air quality is better than one or more of the secondary standards. The review indicates that State plans generally do not contain regulations or procedures specifically addressed to this problem. Accordingly, all State plans are disapproved to the extent that such plans lack procedures or regulations for preventing significant deterioration of air quality in portions of States where air quality is now better than the secondary standards. The disapproval applies to all States listed in Subparts B through DDD of this part. Nothing in this section shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part.

(b) *Definitions.* For purposes of this section:

(1) The phrase "baseline air quality concentration" refers to both sulfur dioxide and particulate matter and



means the sum of ambient concentration levels existing during 1973, those future concentrations estimated to result from sources granted approval for construction or expansion but not yet operating prior to the effective date of this paragraph, and all other concentration increases estimated to result from new sources operating between January 1, 1974, and the effective date of this paragraph. These concentrations can be measured or estimated where appropriate for the area of impact and for all time periods covered by the defined increments. In the case of the maximum three-hour and twenty-four hour concentrations, only the second highest concentrations should be considered.

(2) The phrases "expansion" or "expanded source" refer to any source which intends to increase production through a major capital expenditure.

(3) The phrase "Administrator" means the Administrator of the Environmental Protection Agency or his designated representative.

(4) The phrase "Federal Land Manager" means the head, or his designated representative, of any Department or Agency of the Federal government which administers federally-owned land, including public domain lands.

(5) The phrase "lands of exclusive federal legislative jurisdiction" means lands over which the federal government has received, by whatever method, all governmental authority of the State, with no reservation made to the State except the right to serve process resulting from activities which occurred off the land involved.

(6) The phrase "Indian Reservation" means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(7) The phrase "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized

by the United States as possessing power of self-government.

(8) "Construction" means fabrication, erection, or installation of an affected facility.

(9) "Commenced" means that an owner or operator has undertaken a continuous program of construction or expansion or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or expansion.

(c) *Area designation and deterioration increment.* (1) This paragraph applies to all States listed in Subpart B through DDD of this part and to all lands of exclusive federal legislative jurisdiction and Indian Reservations.

(2) (i) For purposes of this paragraph, areas designated as Class I or Class II shall be limited to the following increases in pollutant concentrations over baseline air quality concentration:

<i>Area designations</i>		
Pollutant	Class I ( $\mu\text{g}/\text{m}^3$ )	Class II ( $\mu\text{g}/\text{m}^3$ )
Particulate matter:		
Annual geometric mean .....	5	10
24-hour maximum .....	10	30
Sulfur dioxide:		
Annual arithmetic mean .....	2	15
24-hour maximum .....	5	100
3-hour maximum .....	25	700

(ii) For purposes of this paragraph, areas designated as Class III shall be limited to concentrations of particulate matter and sulfur dioxide no greater than the national ambient air quality standards.

(3)(i) All areas are designated Class II as of the effective date of this paragraph. Any redesignation shall be determined by the respective States, Federal Land Managers, or Indian governing bodies, as provided below, subject to approval by the Administrator.

(ii) The State may submit to the Administrator a proposal to redesignate areas of the State Class I, Class II, or Class III, provided that:

(a) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with procedures established in § 51.4 of this chapter, and

(b) A summary of the information submitted at the public hearing(s) for the redesignation is provided to the Administrator.

(iii) For lands owned by the Federal Government other than lands of exclusive federal legislative jurisdiction, the State shall propose a redesignation to the Federal Land Manager. This redesignation shall be submitted for approval by the Administrator, provided that:

(a) The requirements of subdivision (ii) of this subparagraph are complied with,

(b) The Federal Land Manager is in agreement with the redesignation, and

(c) All redesignation of Federal land is carried out in a manner consistent with adjacent State and privately owned land.

(iv) A Federal Land Manager may request that the State redesignate Federal lands, or areas affecting Federal lands, and the State shall proceed in accordance with subdivision (iii) of this subparagraph unless the State determines such redesignation would not be in the best public interest.

(v) In the event that disputes between the State and Federal Land Manager over implementation of subdivisions (iii) and (iv) of this subparagraph cannot be resolved, the Executive Office of the President will designate a classification for the area.

(vi) For lands of exclusive federal legislative jurisdiction, the Federal Land Manager shall be responsible for redesignation of such lands, and he may submit to the Administrator a proposal to redesignate areas of such lands Class I, Class II, or Class III, provided that:

(a) At least one public hearing is held in or near the area affected and this hearing is held in accordance with procedures established in § 51.4 of this part, and

(b) A summary of the information submitted at the public hearing(s) for the redesignation is provided to the Administrator, and

(c) Such redesignation is proposed after consultation with the affected State(s).

(vii) Nothing in this section is intended to convey authority to the States over Indian Reservations where such authority is not granted under other laws. For Indian Reservations, the appropriate Indian governing body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III, provided that:

(a) At least one public hearing is held in or near the area affected and this hearing is held in accordance with procedures established in § 51.4 of this chapter, and

(b) A summary of the information submitted at the public hearing(s) for the redesignation is provided to the Administrator, and

(c) Such redesignation is proposed after consultation with the affected State(s) and, for those lands held in trust, with the approval of the Secretary of the Interior.



(viii) The Administrator shall approve, within 60 days, any redesignation proposed pursuant to this subparagraph as follows:

(a) Any redesignation proposed pursuant to subdivisions (ii), (iii), or (iv) of this subparagraph shall be approved unless the Administrator determines (1) that the requirements of subdivisions (ii) through (iv) of this subparagraph have not been complied with, (2) that the State has arbitrarily and capriciously disregarded relevant environmental, social or economic consideration in any redesignation, or (3) that the State has not requested delegation of responsibilities for carrying out this section.

(b) Any redesignation proposed pursuant to subdivision (vi) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (vi) of this subparagraph have not been complied with, or (2) that a Federal Land Manager has arbitrarily and capriciously disregarded relevant environmental, social or economic considerations in any redesignation.

(c) Any redesignation submitted pursuant to subdivision (vii) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (vii) of this subparagraph have not been complied with, or (2) that an Indian governing body has arbitrarily and capriciously disregarded relevant environmental, social, or economic considerations in any redesignation.

(ix) If the Administrator disapproves any proposed area designation under this subparagraph, the State, Federal Land Manager or Indian governing body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator or reconsidering any area designation determined by the Administrator to be arbitrary and capricious.

(d) *Review of new sources.* (1) This paragraph applies to any new or expanded stationary source of a type identi-

fied below in any area designated as Class I or Class II, which has not commenced construction or expansion prior to six months subsequent to the effective date of this paragraph.

(i) Fossil-Fuel Fired Steam Electric Plants of more than 1000 million B.T.U. per hour heat input.

(ii) Coal Cleaning Plants (thermal dryers).

(iii) Kraft Pulp Mill Recovery Furnaces.

(iv) Portland Cement Plants.

(v) Primary Zinc Smelters.

(vi) Iron and Steel Mill Metallurgical Furnaces.

(vii) Primary Aluminum Ore Reduction Plants.

(viii) Primary Copper Smelters.

(ix) Municipal Incinerators capable of charging more than 250 tons of refuse per day.

(x) Sulfuric Acid Plants.

(xi) Petroleum Refineries.

(xii) Lime Plants.

(xiii) Phosphate Rock Processing Plants.

(xiv) By-Product Coke Oven Batteries.

(xv) Sulfur Recovery Plants.

(xvi) Carbon Black Plants (furnace process).

(xvii) Primary Lead Smelters.

(xviii) Fuel Conversion Plants.

(xix) Sintering Plants.

(2) No owner or operator shall commence construction or expansion of a source subject to this paragraph unless the Administrator determines that, on the basis of infor-

mation submitted pursuant to subparagraph (3) of this paragraph:

(i) The effect on air quality concentrations of the source or expanded portion of the source considered with the effect on air quality concentrations of all other new and expanded sources subject to this paragraph and the estimated changes in air quality caused by general commercial, residential, industrial and other growth in the area affected by the proposed source since the date of promulgation of these regulations will not cause the air quality concentration in any area to be increased above the limits shown in paragraph (c)(2) of this section.

(ii) For sources for which standards of performance for new sources have not been proposed under part 60 of this chapter, the source or expanded portion of the source will apply and operate the best available control technology for minimizing emission of particulate matter and sulfur dioxide. In determining best available control technology for each new or expanded source subject to this section, the Administrator shall consider the following:

(a) The process, fuels, and raw material available and intended to be employed,

(b) The engineering aspects of the application of various types of control techniques,

(c) Process and fuel changes,

(d) The cost of the application of the control techniques, process changes, alternative fuels, etc.,

(e) Any applicable State and local emission limitations, and

(f) Locational and siting considerations.

(3) In making the determinations required by subparagraph (2) of this paragraph, the Administrator shall, as a minimum, require the owner or operator of the source

subject to this paragraph to submit: site information, plans, descriptions, specifications, and drawings showing the design of the source, calculations showing the nature and amount of emissions, any other information necessary to determine compliance with any applicable standards of performance for new sources specified in Part 60 of this chapter or any other applicable emission regulations, and the impact that the construction or expansion will have on sulfur dioxide and particulate matter air quality levels. In addition, the owner or operator of the source shall provide information on the nature and extent of general commercial, residential, industrial and other growth which has occurred in the area affected by the source's emissions since the effective date of this paragraph and the estimated impact of such development on ambient concentrations of particulate matter and sulfur dioxide.

(4)(i) Where a new or expanded source is located on Federal lands, such source shall be subject to the procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be in addition to applicable procedures conducted by the Federal Land Manager for administration and protection of the affected Federal lands. Where feasible, the Administrator will coordinate his review and hearings with the Federal Land Manager to avoid duplicate administrative procedures.

(ii) New or expanded sources which are located on Indian Reservations shall be subject to procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be administered by the Administrator in cooperation with the Secretary of the Interior.

(iii) Whenever any new or expanded source is subject to action by a Federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this paragraph shall be coordinated with the broad en-



vironmental reviews under that Act, to the maximum extent feasible and reasonable.

(e) *Procedures for Public Participation.* (1)(i) Prior to making the determinations required by paragraph (d) of this section, the Administrator, within 30 days after submittal of an application by the owner or operator, shall provide opportunity for public comment on the information submitted by the owner or operator, on the owner or operator's analysis of the effect of such construction or expansion on ambient air quality and the Administrator's proposed approval or disapproval of the owner or operator's application. Opportunity for public comment shall include, as a minimum:

(a) Availability for public inspection, in at least one location in the area affected by the source's emissions of the information submitted by the owner or operator, and the Administrator's analysis of effect on air quality.

(b) A 30 day period for submittal of public comment, and

(c) A notice by prominent advertisement in the area affected by the source's emissions of the location of the information and analysis specified in paragraph (d) of this section.

[31009-31047] (ii) A copy of the notice required under this subparagraph (e)(i) shall be sent to officials and agencies having cognizance over the location where the source will be situated, as follows: State and local air pollution control agencies, the chief executives of the city and county; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian governing body whose lands will be significantly affected by the source's emissions.

(iii) Public comments submitted in writing within 30 days after the date such information is made available

shall be considered by the Administrator in making his final decision on the application. All comments shall be made available for public inspection in at least one location in the area in which the source would be located.

(iv) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for approval or denial. Such notification shall be made available for public inspection in at least one location in the area in which the source would be located and shall include the conditions under which the source shall operate. These conditions shall include but shall not be limited to specifications of the allowed emission rate and/or the design and operating characteristics of the control equipment required on the source and any reporting requirements as determined by the Administrator.

(v) The Administrator may extend each of the time periods specified in subdivisions (i), (iii), or (iv) of this subparagraph (e)(1) by no more than 30 days, or such other period as agreed to by the applicant and the Administrator.

(2) Any owner or operator who constructs or operates a stationary source not in accordance with the application, as approved and conditioned by the Administrator, or any owner or operator of a stationary source subject to this paragraph who commences construction or expansion six months after promulgation of this regulation without applying for and receiving approval hereunder, shall be subject to enforcement action under section 113 of the Act.

(3) Approval to construct or expand shall become invalid if construction or expansion is not commenced within 18 months after receipt of such approval or if construction is discontinued for a period of 18 months or more. The

Administrator may extend such time period upon a satisfactory showing that an extension is justified.

(4) Approval to construct or expand shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State implementation plan.

(f) *Delegation of Authority.* (1) The Administrator shall have the authority to delegate responsibility for implementing the procedures for conducting source review pursuant to paragraphs (d) and (e) of this section, in accordance with subparagraphs (2), (3), and (4) of this paragraph (f).

(2) Where the Administrator delegates the responsibility for implementing the procedures for conducting source review pursuant to this section to any agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the agency designated is not an air pollution control agency, such agency shall consult with the appropriate State or local air pollution control agency prior to making any determination required by paragraph (d) of this section. Similarly, where the agency designated does not have continuing responsibilities for land use planning, such agency shall consult with the appropriate State or local land use planning agency prior to making any determination required by paragraph (d) of this section.

(ii) A copy of the notice pursuant to paragraph (e) (1)(i)(c) of this section shall be sent to the Administrator through the appropriate regional office.

(3) The Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be delegated, other than to a regional

office of the Environmental Protection Agency, for new or expanded sources which are owned or operated by the Federal government or for new or expanded sources located on Federal lands; except that, with respect to the latter category, where new or expanded sources are constructed or operated on Federal lands pursuant to leasing or other Federal agreements, the Federal Land Manager may at his discretion, to the extent permissible under applicable statutes and regulations, require the lessee or permittee to be subject to a designated State or local agency's procedures developed pursuant to paragraphs (d) and (e) of this section.

(4) The Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be redelegated, other than to a regional office of the Environmental Protection Agency, for new or expanded sources which are located on Indian reservations.

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[42510] \*

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Title 40—Protection of Environment

CHAPTER 1—ENVIRONMENTAL PROTECTION AGENCY  
SUBCHAPTER C—AIR PROGRAMS

[FRL 302-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION  
PLANS

**Prevention of Significant Air Quality Deterioration**

On May 31, 1972 (37 FR 10842), the Administrator of the Environmental Protection Agency published initial approvals and disapprovals of State Implementation Plans submitted pursuant to section 110 of the Clean Air Act, as amended in 1970.

On November 9, 1972 (37 FR 23836), all State Implementation Plans were disapproved insofar as they failed to provide for the prevention of significant deterioration of existing air quality. This action was taken in response to a preliminary injunction issued by the District Court for the District of Columbia, which also required the administrator to promulgate regulations as to any state plan which either permits the significant deterioration of air quality in any portion of any state, or fails to take the measures necessary to prevent such significant deterioration.

Accordingly, on July 16, 1973 (38 FR 18986), an initial notice of proposed rulemaking was published which set

\* Bracketed numbers represent the page in the *Federal Register* upon which material following such a number can be found.

forth four alternative plans for preventing significant deterioration, and which solicited widespread public involvement in all aspects of the significant deterioration issue. A series of public hearings were held and over 300 written comments were submitted in response to this proposal. The hearing records and the written comments are available for inspection at the EPA Freedom of Information Office, 401 M Street, SW., Washington, D.C.

Due to the lack of precise direction either in the Clean Air Act or in the Court order, the initial proposals focused on the conceptual basis for regulations. The comments received on the proposed regulations therefore tended primarily to discuss conceptual issues such as the roles of federal and state/local governments, rather than detailed comments regarding implementation of the regulations. Accordingly, on August 27, 1974 (39 FR 31000), the Administrator issued repropoed regulations in order to properly explore all aspects of this issue and to focus more clearly on procedural and technical issues.

The Administration has submitted for consideration an amendment to the Act which would eliminate the requirement for preventing significant deterioration of air quality. This amendment is pending before the Congress. Although EPA does not endorse this amendment, EPA seeks full public debate on the significant deterioration issue and in issuing these regulations does not intend to delay or influence consideration of this amendment. The regulations issued herein are necessary because the Court has ruled that the current Clean Air Act requires the Administrator to prevent significant deterioration, and this requirement must be met even though it is possible that Congress may provide additional guidance and/or legislative changes in the future.

The regulations proposed on August 27, 1974, called for the establishment of "classes" of different allowable incremental increases in total suspended particulates (TSP)

and sulfur dioxide (SO<sub>2</sub>). Class I applied to areas in which practically any change in air quality would be considered significant; Class II applied to areas in which deterioration normally accompanying moderate well-controlled growth would be considered insignificant; and Class III applied to those areas in which deterioration up to the national standards would be considered insignificant. Under the proposed regulation, all areas of the country would be designated Class II initially, with provisions for allowing States to reclassify any area to accommodate the social, economic, and environmental needs and desires of the public.

The plan would be implemented through a preconstruction review of specified source categories to determine whether these sources would cause a violation of the appropriate increments. The new source review also included a provision requiring the use of best available control technology on sources covered by the regulation. Finally, the proposal provided procedures for public comment on each application for permission to construct and for delegating the responsibility for implementing the new source review procedures to States or local governmental units.

#### DISCUSSION OF PUBLIC COMMENTS

The August 27 proposal was criticized by environmental groups as being unresponsive to the District Court's order in that it permits the deterioration of air quality up to the national standards in Class III regions. Although this result could also occur in Class I or Class II regions where the difference between existing air quality and the national standard is less than the prescribed air quality increment, all such comments focused on the provision for Class III areas. Unless "significant deterioration" is defined as a percentage of the "unused" air resource, any air quality increment plan, regardless of how small the increment is, could allow deterioration up to the national standard in

some instances. As discussed in the preamble to the proposals of July 16, 1973, and August 27, 1974, air quality monitoring is presently concentrated in heavily polluted areas, with only scattered monitoring in relatively clean areas. Vast numbers of additional monitors will be necessary to precisely define existing air quality, making a plan that is dependent on a knowledge of existing air quality virtually unworkable. Therefore, the fact that air quality could, in some instances, increase to the national standard, does not, in the Administrator's opinion, make the August 27 proposal inconsistent with the Court's ruling.

Additional comments involving Class III areas indicated that economic and social factors should have no bearing on the definition of significant deterioration. These comments stated that EPA must consider only air quality factors and that a single nationwide definition of significant deterioration must be established. Such comments did not take issue with Agency statements made on July 16, 1973, and August 27, 1974, that the definition of significant deterioration is basically a subjective decision. None of the comments suggesting changes to the increments proposed by the Administrator, or proposing alternate plans, offered any justification for the numbers which were selected. Since the consideration of "air quality factors" alone essentially leads to an arbitrary definition of what is "significant," this term only has meaning when the economic and social implications are analyzed and considered. Therefore, the Administrator believes that it is most important to recognize and consider these implications, since the consideration of air quality factors alone provides no basis for selecting one deterioration increment over another.

Even in the subjective terms that are required when considering only the environmental aspects, the contention that there must be a single definition of significant deterioration applicable nationwide does not appear to address



the wide range of environmental needs which exist. Most of the comments implicitly recognized that there is a need to develop resources in presently clean areas of the country, and that significant deterioration regulations should not preclude all growth, but should ensure that growth occurs in an environmentally acceptable manner. However, there are some areas, such as national parks, where any deterioration would probably be viewed as significant. A single nationwide deterioration increment would not be able to accommodate these two situations.

Along these lines, comments were specifically requested in the proposal as to whether the Class II increment should be doubled. Power companies generally supported such a change, while other comments from the industrial sector indicated that the increments were adequate for well-controlled growth. Power companies indicated that many new plants would be much larger than those which would be allowed in a Class II area (approximately 1000 megawatts), and that the Class II increment ought to accommodate such development. None of the comments presented any reasons for permitting such development in a Class II rather than a Class III area, except that the initial designation of all areas will be Class II. The Administrator continues to feel that a Class II increment should be compatible with moderate, well-controlled development in a nationwide context, and that large-scale development should be permitted only in conjunction with a conscious decision to redesignate the area as Class III.

[42511] Many comments also criticized the omission of carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), by hydrocarbons (HC), and photochemical oxidants (O<sub>x</sub>) from the regulations. As indicated on July 16, 1973, and August 27, 1974, and in previous actions involving indirect source review (38 FR 29893 at 29894, 39 FR 7270 at 7272, and 39 FR 25292 at 25295), existing analytical procedures are not adequate to determine the impact of individual sources on

air quality concentrations of reactive pollutants (NO<sub>x</sub> and HC/O<sub>x</sub>). The only presently available technique for relating emissions to air quality for these pollutants is the areawide proportional model used for demonstrating the adequacy of control strategies. The proportional model requires that measured air quality data be available; however, as indicated above, such data are very limited in presently clean areas (even more so than for TSP and SO<sub>2</sub>). In contrast, the air quality concentration of stable pollutants can reasonably be estimated using a diffusion model and therefore measured air quality data are not necessary to determine the incremental air quality impact of an individual source. In addition, since the proportional model assumes that air quality is proportional to emissions, the key to analyzing the impact of an individual source focuses on the definition of baseline emissions. If the source would be located in a very clean area with virtually no baseline emissions, then the predicted air quality increase would be very large (when in fact it probably would not). If the source would be located in a large metropolitan area and the baseline emissions are those of the entire metropolitan area, then the predicted impact of a single additional source would be very small. Therefore, the proportional model is adequate for control strategy development in urban areas where measured air quality data are available and the aggregate impact of controlling many sources is being analyzed. However, it is inappropriate for analyzing the incremental impact of individual new sources.

At this time, the only practical approach for dealing with these pollutants appears to be to minimize emissions as much as possible. The Federal Motor Vehicle Control Program accomplishes this for individual motor vehicles. New source performance standards (NSPS) have already been established under Part 60 of this chapter for many of the source categories subject to the regulation. Where practicable, emission limitations for CO, NO<sub>x</sub>, and HC

have been promulgated for those sources presently subject to Part 60. Although some of the source categories are not yet included in Part 60, either (1) those that are not covered are not significant emitters of CO, NO<sub>x</sub>, or HC, or (2) control technology for these pollutants is unavailable or an emission limitation is impractical (e.g. HC emissions from coke ovens).

One additional step which could be taken to minimize emission of CO, NO<sub>x</sub>, and HC appears to be in the area of minimizing vehicle miles of travel (VMT). Plans for reducing VMT and minimizing future VMT growth have been developed as part of the Transportation Control Plans (TCP) promulgated elsewhere in this chapter. Since the TCP's focus on major metropolitan areas, the flexibility available in designing these plans would be more limited when applied to rural and outlying areas. It is clear, however, that comprehensive transportation planning offers an appropriate mechanism for minimizing VMT growth in such areas. It is not clear, however, how EPA might become involved in comprehensive transportation planning throughout the country under these regulations, although States may wish to consider such an approach when developing their own plans to prevent significant deterioration. States of course, are not precluded from including other more comprehensive measures for dealing with HC, CO, and NO<sub>x</sub> in their own plans.

Some difficult additional questions arise as to how this concept of VMT minimization could be incorporated into these significant deterioration regulations. Would the addition of a VMT increment, similar to the air quality increment approach used in these regulations, be appropriate? Would a new source review of specific indirect source be practical, or should the review apply to larger scale projects such as a new town or a large new development? The Administrator solicits additional comments on

this issue and may modify the regulation at a later date if workable procedures in this area can be developed.

The August 27 proposal specified that all areas of the country, including those areas above the national standards, would be subject to the significant deterioration regulations, even though the District Court order only required the prevention of significant deterioration in areas presently below the national standards. This was done because it was not possible to specify in these regulations all areas of the country which exceed the national ambient air quality standards. In addition, there would be no practical impact of these significant deterioration regulations in areas above the standards, since emissions in such areas are being reduced under the state implementation plans, while these regulations provide for limited allowable increases in emissions.

Nonetheless, there were a number of comments requesting that these regulations specifically exempt all areas presently above the national standards. The regulations promulgated below provide for this exemption only with respect to the area classification requirements. The pre-construction review is still applicable in all areas of the country, in order to ensure that new sources be examined for their impact in presently clean areas which may be adjacent to areas that are above the national standards. In addition, the requirements for applying best available control technology are also applicable to all sources subject to review in order to minimize the deterioration caused by individual sources. This requirement is particularly important where a source in one State would use up a significant portion of the air quality increment in a neighboring State.

The exemption of areas from the classification requirements will be done on a county basis (or functionally equivalent area) and will be based on a determination by the State that the air quality in the county is pervasively



above the national standard. No attempt has been made to define these counties in these regulations. Instead, States must notify the Administrator by June 1, 1975, of those areas which are exempt from the classification requirements.

There were a number of comments requesting clarification of the relationship of these regulations to other portions of the existing implementation plans, particularly the air quality maintenance plans (AQMP's) to be submitted by June, 1975. An air quality maintenance area (AQMA) is an area designated by the Administrator that may have the potential for exceeding any national standard within the next 10-year period as a consequence of current air quality and/or the projected growth rate of the area. The States are required to submit an analysis of the impact on air quality of projected growth in each designated potential problem area. Where maintenance problems are identified by this analysis, the states must also submit plans containing measures to ensure maintenance of national standards during the ensuing 10-year period. AQMA's have been proposed for specific pollutants and final designations will be published shortly. Where an AQMA has been designated because of projected problems in maintaining the NAAQS for either TSP or SO<sub>2</sub>, the significant deterioration increment is applicable only to those portions of the AQMA which are cleaner than either standard. By design AQMA boundaries have been designated to include substantial areas which are relatively clean. This has been done to insure that the planning area corresponds to the entire area where projected new growth in emissions is likely to occur and where regional planning for public services, housing and employment is focused.

Although there seemed to be a general assumption that AQMA's should be designated as Class III, there are several situations where a State may wish to leave the clean air portions of an AQMA as Class II or even to redesignate

the area to a Class I. This would limit peripheral growth so as to complement the goals of the AQMP and in this context, the significant deterioration would actually be a mechanism for partially implementing the AQMP. In addition, there are several clean air areas which have been proposed as AQMA's due to anticipated large-scale development of natural resources. A Class I or Class II designation for such areas would probably eliminate the need for an AQMP for TSP or SO<sub>2</sub>, since the air quality constraint would be the Class I or Class II increment. Therefore, a "designation" of the AQMA for TSP or [42512] SO<sub>2</sub> may be appropriate. In any case, the Administrator recommends that any proposed significant deterioration redesignation have boundaries consistent with AQMA boundaries to facilitate the development of the AQMA plan.

A Class III designation does not necessarily mean that an AQMP would be required. For example, a clean air area might be designated Class III on the basis of a marginal anticipated deterioration in air quality which exceeds the Class II increments. However, the anticipated resulting air quality would still be well below the national standards. If little additional development were anticipated over the subsequent 10-year period so as to threaten the national standards, no AQMP would be required.

Furthermore, it is important to recognize that area classifications do not necessarily imply current air quality or current land use patterns. Instead, classifications should reflect the desired degree of change from current levels and patterns.

A number of public comments indicated concern that these regulations would create a duplication of new source review procedures, which would require a source owner to apply to several different governmental agencies before he could commence construction.

Where the State assumes responsibility for carrying out the new source review procedure under these regulations, most of the concerns expressed above should be eliminated. Procedurally and administratively, the significant deterioration review is virtually identical to existing new source review procedures included in the implementation plan and, in fact, application could probably be made on the same forms. No additional sources would be covered by the significant deterioration review. The only difference between the two new source reviews is in the tests which must be met before approval will be granted. Instead of meeting only the emission limitations which are part of the applicable plan, sources covered by the significant deterioration review must also meet an emission limitation which is consistent with the application of best available control technology. The most restrictive emission limitation supersedes all others. In addition to not causing a violation of any national standard, sources covered by the significant deterioration review must not cause an applicable air quality increment to be exceeded. Technically, the calculations needed to determine if those additional tests will be met are very similar to those already being done. Therefore, where a State administers these regulations, integration with the existing plan should be relatively easy, resulting in only minor additional resource demands. If States do not assume responsibility for implementing these regulations, EPA, through its Regional Offices, will carry out the new source review as required by the Act. Since this may cause duplication of effort on the part of EPA and the States, as well as additional requirements for source owners, the Administrator strongly urges States to accept delegation of these regulations or to develop their own regulations pursuant to the guidance to be issued shortly pursuant to Part 51 of this chapter.

In response to public comments, the Administrator is considering the addition of other source categories, such

as asphalt concrete plants and ferro-alloy plants, to these regulations. One possibility is to add those sources for which new source performance standards for particulate matter, and sulfur dioxide have been proposed or promulgated under Part 60 of this chapter. A proposal to add other source categories will be issued shortly.

One comment indicated confusion as to what functions the Administrator intended to delegate to States under these regulations. The confusion apparently related to the definition of "Administrator" under paragraph (b)(3) as including the Administrator's "designated representative." Although the term "Administrator" is used in paragraph (c), relating to the approval of State redesignation, the Administrator does not intend to designate to a representative outside the Agency the review and approval functions under this paragraph. As indicated in paragraph (f), the only functions which will be delegated to States will be the preconstruction review under paragraphs (d) and (e).

A question was raised as to whether an area could have one classification for SO<sub>2</sub> and another for TSP. Different classifications for SO<sub>2</sub> and TSP may make sense in certain situations, and the Administrator does not intend to preclude this option.

Several public comments requested that the technical procedures for determining the air quality impact of a new source be specified by EPA. The techniques the Agency intends to use in most cases are set forth in "Guidelines for Air Quality Maintenance Planning and Analysis," Vols. 10 and 12. Volume 10, "Reviewing New Stationary Sources," pertains to the air quality impact of individual sources, while Vol. 12, "Applying Atmospheric Simulation Models to Air Quality Maintenance Areas," will be used to determine the impact of other growth and development in the area affected by the source. These documents are



available for inspection at EPA's Regional Offices and the EPA Freedom of Information Center, 401 M Street, SW., Washington, D.C. 20460, and will be available shortly for general distribution through the National Technical Information Service, 5258 Port Royal Road, Springfield, Virginia 22151. The Administrator, or States which will be implementing the preconstruction review as EPA's agent, is not required to use the techniques in these documents if other techniques are more appropriate in certain circumstances.

There was considerable divergence of opinion over the initial classification of all areas. Industrial groups generally supported an initial designation of Class III so as to minimize disruption of projects scheduled to commence construction in the near future. Environmental groups supported an initial designation of Class I, fearing that a Class II or III designation would permit air quality deterioration of some clean areas before States could act to redesignate areas to a more restrictive classification. The Administrator continues to feel that an initial Class II designation represents the most reasonable compromise between these widely differing positions. Also, since the regulations apply only to sources which commence construction after June 1, 1975, the Administrator feels that this deferral should reduce disruption to the industrial sector while permitting States sufficient time to consider reclassifying any area either to Class I or III before requests for approval must be acted upon.

There were several questions raised concerning the appropriate size of an area which should be considered for redesignation. Calculations have shown that because of the small air quality increments specified for Class I areas, these levels can be violated by a source located many miles inside an adjacent Class II or III area. For example, a power plant which just meets the Class II increment for  $\text{SO}_2$  could under some conditions violate the

Class I increment for  $\text{SO}_2$  60 or more miles away. Under the regulations promulgated below, a source could not be allowed to construct if it would violate an air quality increment either in the area where the source is to be located or in any neighboring area in the State. Therefore, wherever a Class I area adjoins a Class II or III area, the potential growth restrictions, especially for power plant development, extends well beyond the Class I boundaries into the adjacent areas. A similar situation exists, to a greater or lesser degree, wherever areas of different classification adjoin each other. Therefore, the area with the less restrictive classification should include an additional area at the periphery where it is clearly recognized that development will be somewhat restricted due to the adjacent "cleaner" area. As a result, a Class I redesignation could be fairly limited in size, yet the adjoining Class II or Class III areas would need to cover a substantial area in order to fully utilize the Class II or III increment. Again, it should be clear that the Class II or III increment could only be fully utilized toward the center of the area and that at the periphery, allowable deterioration will be dictated by the adjoining Class I area rather than the Class II or III increment.

The distance a large source would need to be located away from a Class I boundary is more dependent on the meteorological conditions in the area rather than the size of the source. Where very long pollutant travel times from the source to the receptor are involved, the assumptions concerning the persistence of wind direction and atmospheric stability are critical. At some point, it can be assumed that a receptor will be virtually [42513] unaffected by a source, regardless of the source's strength, since the critical meteorological conditions would not be expected to persist long enough to move the pollutants from source to receptor for any significant period of time. This distance is, of course, dependent on local meteorological conditions.

logical conditions, but for most areas the maximum distance would be 60 to 100 miles.

#### CHANGES TO THE REGULATIONS

1. *Definition of Modified Source.* The term "expanded source" was used in the proposal in place of the more commonly used term "modified source" in order to specifically exclude from the preconstruction review sources which increase emissions solely due to switching from a low sulfur to a higher sulfur content fuel. The proposed definition of expanded source was related to whether a source increased emissions through a "major capital expenditure." This phrase was criticized by many as being too vague. Therefore, the general term "modified source" has been reinstated, along with a specific exemption for fuel conversion, which exemption is applicable only to the significant deterioration review procedures. The general definition of modified source in Part 52 is changed slightly to be more specific and to be consistent with the definition used in Part 60. Changes to the definition of modification in Part 60 were proposed on October 15, 1974 (39 FR 36946) and comments on this proposal are presently being analyzed. It is the Administrator's intent to change the definition of modification under Part 52 to be consistent with the final definition of this term under Part 60.

These changes are not intended to modify the applicability of either the proposed significant deterioration regulations or other new source review procedures promulgated elsewhere in Part 52.

2. *Definition of best available control technology.* Since this term may be used elsewhere in Part 52 in the future, it has been defined in the general definitions section of Part 52. The definition is consistent with the wording used in the August 27 proposal. It should be noted that new source performance standards (NSPS) may only apply to certain affected facilities within a large source. For

example, only basic oxygen process furnaces in a steel mill are presently covered by NSPS, while blast furnaces, scarfing operations and other significant sources within the mill are not presently covered. BACT must be determined for these facilities on a case-by-case basis until such time as NSPS are issued for these other facilities.

3. *Definition of baseline air quality concentration.* The proposal intended to establish the baseline air quality as that air quality existing as of the effective date of regulation, adjusted to include air resource commitments resulting from approval of other air pollution sources pursuant to existing new source review procedures in the plan. The definition of baseline air quality has been clarified to reflect this intent and the calculation has been simplified by specifying the use of 1974 air quality data rather than 1973 data. No substantive change is intended by this revision.

4. *Conditions for applying for redesignation of areas.* In order that the Administrator have an adequate basis for determining whether an application to redesignate an area should be approved or disapproved, a provision has been added to paragraph (c)(3)(ii) to require that the necessary information be a part of the hearing record on the proposed designation. Specifically, the hearing record must show that the social, environmental, and economic effects of the proposed redesignation have been evaluated for the area being reclassified as well as for adjacent areas and that regional and national interests have been considered. The Administrator will provide additional guidance to assist States in developing their redesignation proposals and analyzing the impact of such redesignations.

5. *State reclassification of Federal and Indian Lands.* Various public comments indicate that Federal lands should be subject to State jurisdiction. EPA did not intend to preclude State redesignations provided that the



Federal Land Manager can elect to keep the air quality over Federal lands in a more pristine condition than the State might designate. Therefore, the regulations have been revised to subject Federal lands to State redesignations but reserve to the Federal Land Manager the authority to subject such lands to a more stringent designation. This approach is consistent with section 118 of the Clean Air Act (42 U.S.C. 1857f) which requires that Federal agencies having jurisdiction over any property or facility meet substantive State air pollution control standards and limitations. There is nothing in the Clean Air Act or the legislative history of the Act that indicates the Congress intended to preclude the Federal Government from meeting more restrictive standards than are imposed by the States. This provision also ensures that national forests and parks can be protected by the Federal Government from deterioration of air quality. The different treatment accorded lands of exclusive Federal jurisdiction has been eliminated since the revised regulations make it clear that the Federal Government can protect air quality over all Federal lands. In accordance with Executive Order 11752, these regulations do not require Federal facilities to comply with State or local administrative procedures with respect to pollution abatement and control. Review of new sources on Federal lands is reserved to EPA, except as State review is permitted by a Federal Land Manager with respect to activities conducted under Federal leases.

The State of New Mexico commented that the proposed regulations appeared to take authority away from the States to regulate air pollution over Indian lands. These regulations were not intended to alter the present legal relationships between the States and Indian Reservations within the States. As these relationships vary from State to State, EPA has not attempted to define such relationships but has modified the proposed regulations to clarify that there is no intent to alter these relationships. Where States have not assumed jurisdiction over Indian lands,

the regulations provide that the Indian governing body may propose redesignations to the Administrator. Boundary problems between Indian and State lands are dealt with in the same way that boundary problems between two States are dealt with, as discussed below. This is consistent with the independent status of Indian lands not subject to State laws.

6. *Public comment on proposed redesignations.* In order to permit the public an opportunity to comment on whether a proposed redesignation should be approved or disapproved, the Administrator will publish all proposed redesignations in the FEDERAL REGISTER as proposed rule-making and provide at least 30 days for submission of public comments.

7. *Preconstruction review and BACT in Class III areas.* Several public comments criticized the proposed regulations for exempting sources in Class III areas from preconstruction review. It was pointed out that there would be no procedure to prevent construction of a source in a Class III area which would violate an increment in an adjacent Class I or II area. Therefore, the regulations promulgated below require that new sources, wherever they are located, must be reviewed to determine the impact on air quality in adjacent regions.

In order to minimize the deterioration caused by individual sources, the proposal has been modified to make the BACT requirements applicable wherever the source is located, not just in Class I or II areas. Since a source located many miles away from a Class I area could easily use up the entire Class I increment, as discussed below, the necessity to minimize emissions as much as possible in all areas is particularly important.

8. *Determination of allowable air quality increment.* The provisions of paragraph (d)(2)(i) have been modified to be more specific and to specify that reduction of emissions

from existing sources which contributed to the baseline air quality concentration should be accounted for in determining the unused portion of the allowed air quality increment.

9. *EPA review of state redesignations.* The proposed regulations did not adequately cover problems created when a State or Indian Governing Body wishes to designate one or more of its areas in such a way that it will have a negative impact on other States or Indian Reservations. These regulations provide that a State or Indian Governing Body must take into account the effect of proposed redesignations on other States, Indian Reservations, and regional and national [42514] interests. Where no State or Indian Governing Body protests the redesignation of another State or Indian Reservation, the Administrator will only review the redesignation to determine whether it is arbitrary and capricious. However, where a State or Indian Governing Body protests a redesignation to the State proposing the redesignation and to the Administrator, the Administrator will take an expanded role of review in which he will balance the competing interests involved.

10. *Specification of emission limitation.* In order to ensure that the requirement for applying BACT is properly implemented, the provisions of paragraph (d)(2)(ii) have been modified to require that an emission limitation be established as a condition to approval. This places the emphasis on emissions rather than the presence of any particular control equipment. This change also makes the BACT requirement for sources not covered by NSPS more consistent with the NSPS requirements. However, if the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, he may instead prescribe a design or equipment standard requiring the application of best available control technology. Such standard

shall to the degree possible set forth the emission reductions achievable by implementation of such design or equipment, and shall provide for compliance by means which achieve equivalent results.

11. *Responsibility for performing air quality impact analysis.* A number of public comments suggested that the reviewing agency analyze the air quality impact of additional growth that has occurred in the vicinity of the proposed source since the reviewing agency is more likely to have the necessary data which is needed. The Administrator has concluded that it would be more appropriate for the reviewing agency to perform the air quality impact analysis based on information submitted by the applicant. This change will eliminate the uncertainty which was expressed concerning the requirement that the applicant analyze the air quality impact of general growth and development "in the area affected by the proposed source," since the reviewing agency will define this area and perform the calculations required. Also the provisions of paragraph (d)(3) do not require the applicant to submit growth data with each application. However, the reviewing agency may request such data from the applicant in cases where it does not have the necessary information and will specify the area over which such information is required.

12. *Procedures for public participation.* The procedures specified in paragraph (e) for public comment on an application to construct have been modified to be consistent with the procedures contained in EPA's regulations for indirect source review (33 FR 25292). The changes allow the reviewing agency to require additional information, where necessary, and permit the applicant to respond to public comments involving his application to construct.

13. *Sources subject to review.* As proposed on August 27, several of the 19 source categories subject to the preconstruction review appeared to be restricted to an individual process (e.g. Kraft pulp mill recovery furnaces) rather



than all emission points on the premises. The wording has been changed to be consistent with the listing of the other source categories and to make clear that all emission points associated with a stationary source must be considered in determining whether the source will violate an applicable air quality increment. This change allows sintering plants to be dropped from the list, since sintering operations will be covered under the primary metals industries which are subject to review under these regulations.

A detailed explanation of the technical and policy considerations which form the basis for these regulations is being prepared. Upon completion, the Administrator will publish a notice of the *FEDERAL REGISTER* announcing the availability of this information for public inspection.

These regulations will be effective January 6, 1975 and will be applicable to sources commencing construction on or after June 1, 1975.

(Secs. 110(c) and 301(a) of the Clean Air Act as amended [42 U.S.C. 1857 c-5(c) and 1857 g(a)])

Dated: November 27, 1974.

RUSSELL E. TRAIN,  
*Administrator.*

Subpart A, Part 52, Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. In § 52.01, paragraph (d) is revised and paragraph (f) is added. As amended § 52.01 reads as follows:  
§ 52.01 *Definitions.*

• • • • •  
(d) The phrases "modification" or "modified source" mean any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any pollutant for which a national standard has been promulgated under Part 50 of this chapter or

which results in the emission of any such pollutant not previously emitted, except that:

(1) Routine maintenance, repair, and replacement shall not be considered a physical change, and

(2) The following shall not be considered a change in the method of operation:

(i) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) An increase in the hours of operation;

(iii) Use of an alternative fuel or raw material, if prior to the effective date of a paragraph in this Part which imposes conditions on or limits modifications, the source is designed to accommodate such alternative use.

• • • • •

(f) The term "best available control technology," as applied to any affected facility subject to Part 60 of this chapter, means any emission control device or technique which is capable of limiting emissions to the levels proposed or promulgated pursuant to Part 60 of this chapter. Where no standard of performance has been proposed or promulgated for a source or portion thereof under Part 60, best available control technology shall be determined on a case-by-case basis considering the following:

(1) The process, fuels, and raw material available and to be employed in the facility involved,

(2) The engineering aspects of the application of various types of control techniques which have been adequately demonstrated,

(3) Process and fuel changes,

(4) The respective costs of the application of all such control techniques, process changes, alternative fuels, etc.,

(5) Any applicable State and local emission limitations, and

(6) Locational and siting considerations.

2. Section 52.21 is revised by designating the first paragraph (a) and adding paragraphs (b), (c), (d), (e), and (f) to read as follows:

§ 52.21 *Significant deterioration of air quality.*

(a) *Plan disapproval.* Subsequent to May 31, 1972, the Administrator reviewed State implementation plans to determine whether or not the plans permit or prevent significant deterioration of air quality in any portion of any State where the existing air quality is better than one or more of the secondary standards. The review indicates that State plans generally do not contain regulations or procedures specifically addressed to this problem. Accordingly, all State plans are disapproved to the extent that such plans lack procedures or regulations for preventing significant deterioration of air quality in portions of States where air quality is better than the secondary standards. The disapproval applies to all States listed in Subparts B through DDD of this part. Nothing in this section shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part.

(b) *Definitions.* For purposes of this section:

(1) The phrase "baseline air quality concentration" refers to both sulfur dioxide and particulate matter and means the sum of ambient concentration levels existing during 1974 and those additional concentrations estimated to result from sources granted approval (pursuant to approved new source review procedures in the plan) for construction or modification but not yet operating prior to [42515] January 1, 1975. These concentrations shall be

established for all time periods covered by the increments set forth under paragraph (c)(2)(i) of this section, and may be measured or estimated. In the case of the maximum three-hour and twenty-four-hour concentrations, only the second highest concentrations should be considered.

(2) The phrase "Administrator" means the Administrator of the Environmental Protection Agency or his designated representative.

(3) The phrase "Federal Land Manager" means the head, or his designated representative, of any Department or Agency of the Federal Government which administers federally-owned land, including public domain lands.

(4) The phrase "Indian Reservation" means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(5) The phrase "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(6) "Construction" means fabrication, erection, or installation of an affected facility.

(7) "Commenced" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(c) *Area designation and deterioration increment.* (1) This paragraph applies to all States listed in Subpart B through DDD of this part, all lands owned by the Federal Government, and Indian Reservations, except those counties or other functionally equivalent areas that pervasively exceed any national ambient air quality standards for



sulfur oxides or total suspended particulates and then only with respect to such pollutants. States shall notify the Administrator by June 1, 1975, of those areas which are above the national air quality standards and therefore are exempt from the requirements of this paragraph.

(2)(i) For purpose of this paragraph, areas designated as Class I or Class II shall be limited to the following increases in pollutant concentrations over the baseline air quality concentration:

<i>Area designations</i>		
Pollutant	Class I (g/m)	Class II (g/m)
Particulate matter:		
Annual geometric mean .....	5	10
24-hour maximum .....	10	30
Sulfur dioxide:		
Annual arithmetic mean .....	2	15
24-hour maximum .....	5	100
3-hour maximum .....	25	700

(ii) For purposes of this paragraph, areas designated as Class III shall be limited to concentrations of particulate matter and sulfur dioxide no greater than the national ambient air quality standards.

(3)(i) All areas are designated Class II as of the effective date of this paragraph. Redesignation may be proposed by the respective States, Federal Land Managers, or Indian Governing Bodies, as provided below, subject to approval by the Administrator.

(ii) The State may submit to the Administrator a proposal to redesignate areas of the State Class I, Class II, or Class III, provided that:

(a) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with procedures established in § 51.4 of this chapter, and

(b) Other States which may be affected by the proposed redesignation are notified at least 30 days prior to the public hearing, and

(c) A discussion of the reasons for the proposed redesignation is available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion, and

(d) The proposed redesignation is based on the record of the State's hearing, which must reflect the basis for the proposed redesignation, including consideration of (1) growth anticipated in the area, (2) the social, environmental, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and States, and (3) any impacts of such proposed redesignation upon regional or national interests.

(iii) Except as provided in subdivision (iv) of this subparagraph, a State in which lands owned by the Federal Government are located may submit to the Administrator a proposal to redesignate such lands Class I, Class II, or Class III in accordance with subdivision (ii) of the subparagraph provided that:

(a) The redesignation is consistent with adjacent State and privately owned land, and

(b) Such redesignation is proposed after consultation with the Federal Land Manager.

(iv) Notwithstanding subdivision (iii) of this subparagraph, the Federal Land Manager may submit to the Administrator a proposal to redesignate any Federal lands to a more restrictive designation than would otherwise be applicable provided that:

(a) The Federal Land Manager follows procedures equivalent to those required of States under paragraph (c)(3)(ii) and,

(b) Such redesignation is proposed after consultation with the State(s) in which the Federal Land is located or which border the Federal land.

(v) Nothing in this section is intended to convey authority to the States over Indian Reservations where States have not assumed such authority under other laws nor is it intended to deny jurisdiction which States have assumed under other laws. Where a State has not assumed jurisdiction over an Indian Reservation the appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III, provided that:

(a) The Indian Governing Body follows procedures equivalent to those required of States under paragraph (c)(3)(ii) and,

(b) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located or which border the Indian Reservation and, for those lands held in trust, with the approval of the Secretary of the Interior.

(vi) The Administrator shall approve, within 90 days, any redesignation proposed pursuant to this subparagraph as follows:

(a) Any redesignation proposed pursuant to subdivisions (ii) and (iii) of this subparagraph shall be approved unless the Administrator determines (1) that the requirements of subdivisions (ii) and (iii) of this subparagraph have not been complied with, (2) that the state has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3)(ii)(d) of this paragraph, (3) that the State has not requested delegation of

responsibility for carrying out the new source review requirements of paragraphs (d) and (e) of this section.

(b) Any redesignation proposed pursuant to subdivision (iv) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (iv) of this subparagraph have not been complied with, or (2) that the Federal Land Manager has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3)(ii)(d) of this paragraph.

(c) Any redesignation submitted pursuant to subdivision (v) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (v) of this subparagraph have not been complied with, or (2) that the Indian Governing Body has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3)(ii)(d) of this paragraph.

(d) Any redesignation proposed pursuant to this paragraph shall be approved only after the Administrator has solicited written comments from affected Federal agencies and Indian Governing Bodies and from the public on the proposal.

(e) Any proposed redesignation protested to the proposing State, Indian Governing Body, or Federal Land Manager and to the Administrator by another State or Indian Governing Body because of the effects upon such protesting State or Indian Reservation shall be approved by the Administrator only if he determines that in his judgment the redesignation appropriately balances considerations of growth anticipated in the area proposed to be redesignated; the social, environmental and economic effects of such redesignation upon the [42516] area being redesignated and upon other areas and States; and any impacts upon regional or national interests.

(vii) If the Administrator disapproves any proposed area designation under this subparagraph, the State, Fed-



eral Land Manager or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator or reconsidering any area designation determined by the Administrator to be arbitrary and capricious.

(d) *Review of new sources.* (1) This paragraph applies to any new or modified stationary source of a type identified below which will be located in any State listed in Subpart B through DDD of this part, which source has not commenced construction or expansion prior to June 1, 1975. A source which is modified, but does not increase the amount of a pollutant other than sulfur oxides or particulate matter, or is modified to utilize an alternative fuel, or higher sulfur content fuel shall not be subject to this paragraph.

(i) Fossil-Fuel Steam Electric Plants of more than 1000 million B.T.U. per hour heat input.

(ii) Coal Cleaning Plants.

(iii) Kraft Pulp Mills.

(iv) Portland Cement Plants.

(v) Primary Zinc Smelters.

(vi) Iron and Steel Mills.

(vii) Primary Aluminum Ore Reduction Plants.

(viii) Primary Copper Smelters.

(ix) Municipal Incinerators capable of charging more than 250 tons of refuse per 24 hour day.

(x) Sulfuric Acid Plants.

(xi) Petroleum Refineries.

(xii) Lime Plants.

(xiii) Phosphate Rock Processing Plants.

(xiv) By-Product Coke Oven Batteries.

(xv) Sulfur Recovery Plants.

(xvi) Carbon Black Plants (furnace process).

(xvii) Primary Lead Smelters.

(xviii) Fuel Conversion Plants.

(2) No owner or operator shall commence construction or modification of a source subject to this paragraph unless the Administrator determines that, on the basis of information submitted pursuant to subparagraph (3) of this paragraph:

(i) The effect on air quality concentration of the source or modified source, in conjunction with the effects of growth and reduction in emissions after January 1, 1975, of other sources in the area affected by the proposed source, will not violate the air quality increments applicable in the area where the source will be located nor the air quality increments applicable in any other areas. The analysis of emissions growth and reduction after January 1, 1975, or other sources in the areas affected by the proposed source shall include all new and modified sources granted approval to construct pursuant to this paragraph; reduction in emissions from existing sources which contributed to the baseline air quality; and general commercial, residential, industrial, and other sources of emissions growth not included in the definition of baseline air quality which has occurred since January 1, 1975.

(ii) The new or modified source will meet an emission limit, to be specified by the Administrator as a condition to approval, which represents that level of emission reduction which would be achieved by the application of best available control technology, as defined in § 52.01(f), for particulate matter and sulfur dioxide. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a partic-

ular class of sources would make the imposition of an emission standard infeasible, he may instead prescribe a design or equipment standard requiring the application of best available control technology. Such standard shall to the degree possible set forth the emission reductions achievable by implementation of such design or equipment, and shall provide for compliance by means which achieve equivalent results.

(iii) With respect to modified sources, the requirements of subparagraph (2)(ii) of this paragraph shall be applicable only to the facility or facilities from which emissions are increased.

(3) In making the determinations required by subparagraph (2) of this paragraph, the Administrator shall, as a minimum, require the owner or operator of the source subject to this paragraph to submit: site information; plans, description, specifications, and drawings showing the design of the source; information necessary to determine the impact that the construction or modification will have on sulfur dioxide and particulate matter air quality levels; and any other information necessary to determine that best available control technology will be applied. Upon request of the Administrator, the owner or operator of the source shall also provide information on the nature and extent of general commercial, residential, industrial, and other growth which has occurred in the area affected by the source's emissions (such area to be specified by the Administrator) since the effective date of this paragraph.

(4)(i) Where a new or modified source is located on Federal lands, such source shall be subject to the procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be in addition to applicable procedures conducted by the Federal Land Manager for administration and protection of the affected Federal Lands. Where feasible, the Administrator will coordinate his

review and hearings with the Federal Land Manager to avoid duplicate administrative procedures.

(ii) New or modified sources which are located on Indian Reservations shall be subject to procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be administered by the Administrator in cooperation with the Secretary of the Interior with respect to lands over which the State has not assumed jurisdiction under other laws.

(iii) Whenever any new or modified source is subject to action by a Federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this paragraph shall be coordinated with the broad environmental reviews under that Act, to the maximum feasible and reasonable.

(5) Where an owner or operator has applied for permission to construct or modify pursuant to this paragraph and the proposed source would be located in an area which has been proposed for redesignation to a more stringent class (or the State, Indian Governing Body, or Federal Land Manager has announced such consideration), approval shall not be granted until the Administrator has acted on the proposed redesignation.

(e) *Procedures for public participation.* (1) (i) Within 20 days after receipt of an application to construct, or any addition to such application, the Administrator shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (e) (1) (ii) of this section shall be the date on which all required information is received by the Administrator.



(ii) Within 30 days after receipt of a complete application, the Administrator shall:

(a) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.

(b) Make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Administrator's preliminary determination and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(c) Notify the public, by prominent advertisement in newspaper of general circulation in each region in which the proposed source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the source.

(iii) A copy of the notice required pursuant to this subparagraph shall be sent to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional land use planning agency; and any State, Federal Land Manager or Indian Governing Body whose lands will be significantly affected by the source's emissions.

(iv) Public comments submitted in writing within 30 days after the date [42517] such information is made available shall be considered by the Administrator in making his final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments sub-

mitted by the public. The Administrator shall consider the applicant's response in making his final decision. All comments shall be made available for public inspection in at least one location in the region in which the source would be located.

(v) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The Administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location in the region in which the source would be located.

(vi) The Administrator may extend each of the time periods specified in paragraph (e)(1) (ii), (iv), or (v) of this section or such other period as agreed to by the applicant and the Administrator.

(2) Any owner or operator who constructs, modifies, or operates a stationary source not in accordance with the application, as approved and conditioned by the Administrator, or any owner or operator of a stationary source subject to this paragraph who commences construction or modification after June 1, 1975, without applying for and receiving approval hereunder, shall be subject to enforcement action under section 113 of the Act.

(3) Approval to construct or modify shall become invalid if construction or expansion is not commenced within 18 months after receipt of such approval or if construction is discontinued for a period of 18 months or more. The Administrator may extend such time period upon a satisfactory showing that an extension is justified.

(4) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State, and Federal regu-

lations which are part of the applicable State Implementation Plan.

(f) *Delegation of authority.* (1) The Administrator shall have the authority to delegate responsibility for implementing the procedures for conducting source review pursuant to paragraphs (d) and (e), in accordance with subparagraphs (2), (3), and (4) of this paragraph.

(2) Where the Administrator delegates the responsibility for implementing the procedures for conducting source review pursuant to this section to any Agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the agency designated is not an air pollution control agency, such agency shall consult with the appropriate State or local air pollution control agency prior to making any determination required by paragraph (d) of this section. Similarly, where the agency designated does not have continuing responsibilities for land use planning, such Agency shall consult with the appropriate State and local land use planning agency prior to making any determination required by paragraph (d) of this section.

(ii) A copy of the notice pursuant to paragraph (e)(1)(ii)(c) of this section shall be sent to the Administrator through the appropriate regional office.

(3) In accordance with Executive Order 11752, the Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be delegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are owned or operated by the Federal government or for new or modified sources located on Federal lands; except that, with respect to the latter category, where new or modified sources are constructed or operated on Federal lands pursuant to leasing or other Federal agreements, the Federal Land Manager may at his discre-

tion, to the extent permissible under applicable statutes and regulations, require the lessee or permittee to be subject to a designated State or local agency's procedures developed pursuant to paragraphs (d) and (e) of this section.

(4) The Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be redelegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are located on Indian reservations except where the State has assumed jurisdiction over such land under other laws, in which case the Administrator may delegate his authority to the States in accordance with subparagraphs (2), (3), and (4) of this paragraph.

[FR Doc. 74-28353. Filed 12-4-74; 8:45 am]



[2802] \*

[Federal Register, Vol. 40, No. 11—Thursday,  
January 16, 1975]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY  
SUBCHAPTER C—AIR PROGRAMS

[FRL 321-3]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION  
PLANS

**Prevention of Significant Air Quality Deterioration: Correction**

In F.R. Doc. 74-28353, published at page 42515 in the issue dated Thursday, December 5, 1974, in § 52.21, paragraph (c)(2)(i), the engineering units “g/m” are incorrectly used to indicate the increases in pollutant concentrations over baseline air quality found in the area designations table. The units are corrected to read “ $\mu\text{g}/\text{m}^3$ ” and are appropriate to all pollutant concentrations in paragraph (c)(2)(i).

Dated: January 9, 1975.

ROGER STRELOW,  
*Assistant Administrator  
for Air and Waste Management.*

[FR Doc. 75-1364 Filed 1-15-75; 8:45 am]

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\* Bracketed numbers represent the page in the *Federal Register* upon which material following such a number can be found.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION  
PLANS

[FRL 316-1]

*New Jersey Transportation Control Plan; Revisions*

On November 13, 1973, EPA published in the *FEDERAL REGISTER* (38 FR 31388) the New Jersey Transportation Control Plan containing plans to reduce parking in the Central Business Districts (CBD's) of the cities of Trenton, Camden and Newark (§ 52.1587). Generally, the CBD of a city is defined as the section wherein land uses involving business, commerce and industrial activities predominate. The CBD usually does not include residential areas.

Representatives of the planning bodies of the three cities have stated that the respective CBD's as presently defined either include large residential tracts or omit substantial sections of the business sector. It was recommended that these definitions be revised to describe the true business districts.

Consequently, in order to achieve the intended effect of the CBD-oriented strategies, EPA is redefining these districts to conform with the definitions submitted by the respective planning agencies.

Because of the importance of proceeding promptly with the planning necessary to carry out the on-street parking limitation program and because the nature of this revision is to more precisely define the areas affected at the request of the cities involved, the Administrator finds good cause to declare the regulations effective immediately upon publication.

(Sec. 110(c), 301(a), Clean Air Act (42 U.S.C. 1857-5(c), 1857(g)))

Dated: January 8, 1975

Part 52 of Chapter I, Title 40, Code of Federal Regulation is amended as follows:

SUBPART FF—NEW JERSEY

1. Section 52.1587 is amended to read as follows:

§ 52.1587 Regulation limiting on-street parking.

• • • • •

(e) For purposes of this section, the CBD's for each of the following cities shall be bounded and described as follows:

(1) *Camden*. Beginning at a point formed by the intersection of US-30 and Mickle Street extended; thence south along Mickle Street, arcing to the south and west, to the intersection of Mickle Street and Third Street; thence north along Third Street to the Benjamin Franklin Bridge; thence east along the line of the Bridge to US-30; thence finally east along US-30, arcing to the east and south, to the intersection of US-30 with Mickle Street extended, the point of beginning. Streets forming boundaries shall be included in the CBD.

(2) *Newark*. Beginning at a point formed by the intersection of Center Street and McCarter Highway (Highway 21); thence north along McCarter Highway to Lombardi Street; thence west along Lombardi Street to Atlantic Street; thence north on Atlantic Street to Bridge Street; thence west on Bridge Street to Broad Street; thence north on Broad Street to Orange Street; thence west on Orange Street to Essex Street; thence north on Essex Street to James Street; thence east of James Street to Washington Street; thence south on Washington Street to Warren Street; thence west on Warren Street to University Avenue; thence south on University Avenue to Market Street; thence west on Market Street to Arlington Street; thence south on Arlington Street

to William Street; thence east on William Street to Broad Street; thence south on Broad Street to Walnut Street; thence east on Walnut Street to Mulberry Street; thence north on Mulberry Street to Park Street; thence west on Park Street to Kitchell Street; thence north on Kitchell Street to Center Street; thence finally east on Center Street to its intersection with McCarter Highway, the point of beginning.



[25004] \*

[Federal Register, Vol. 40, No. 114—Thursday,  
June 12, 1975]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY  
SUBCHAPTER C—AIR PROGRAMS

[FRL 379-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION  
PLANS

**Prevention of Significant Air Quality Deterioration**

On December 5, 1974 (39 FR 42510), the Administrator of the Environmental Protection Agency promulgated final regulations for preventing the significant deterioration of air quality in each state. This notice contains minor amendments to the December 5 promulgation.

All State implementation plans were disapproved with respect to prevention of significant deterioration of air quality in a general disapproval statement set forth in § 52.21(a). In the amendments published below, a specific disapproval is incorporated into the applicable subpart for each state in Part 52 and the general disapproval statement of § 52.21(a) is modified accordingly. Similarly, the specific requirements of paragraphs (c), (d), (e), and (f) in § 52.21 for preventing significant deterioration are incorporated by reference into each subpart. The applicability provisions of § 52.21(c) and (d) are changed accordingly. Although these changes have no substantive effect, they are made so that all approval/disapproval actions and promulgations appear in the appropriate sub-

\* Bracketed numbers represent the page in the *Federal Register* upon which material following such a number can be found.

part designated for each State so that all regulations applicable to a particular implementation plan are located in one place.

The definition of "construction" is modified below to remove the reference to "affected facility," since this term is used differently in 40 CFR Part 60 (Standards of Performance for New Stationary Sources) and could create confusion. The definition of "commenced" is modified to be consistent with the definition of that term set forth in Part 60. These changes correct inadvertent errors in the December 5 regulations: no substantive alteration of the regulation is intended by these modifications.

The provisions of § 52.21(c)(3)(ii), which set forth the requirements for redesignating areas, are modified to require consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation. Due to the significant land use implications of these regulations, this provision is being added to ensure that the elected leaders of cities and counties affected by the redesignation have substantial input to the reclassification decision.

The provisions of § 52.21(c)(3)(vi), specifying the standards the Administrator will use in approving or disapproving a request for reclassification, are changed below to require that a State must have requested and received delegation of the new source review before a State may reclassify any area. The previous wording would have permitted a State to reclassify areas, even though their request for delegation might have been unapprovable. Since the intent of this provision was to ensure that a State implement the new source review as a precondition to reclassification, this change is made to be consistent with that intent.

It has come to the Administrator's attention that the above provision could be inequitable in cases where a

State does not have adequate legal authority to accept delegation. Even though a State may be willing to accept the delegation, lack of legal authority may prevent the State from doing so. Therefore, an exemption from this precondition for reclassification is added below for cases where lack of legal authority prevents a State from accepting delegation. The exemption provision added below distinguishes between the administrative/technical functions of the new source review and the enforcement functions. It makes clear that EPA can delegate only the administrative/technical functions and will implement any necessary enforcement functions and that this arrangement will satisfy the requirements for accepting delegation.

Paragraph (c)(1) of the December 5 regulations required States to notify the Administrator by June 1, 1975, of those areas which are pervasively above any national standard for sulfur dioxide or particulate matter and therefore would be exempt from the area classification requirements of paragraph (c). This provision has been modified to remove the [25005] June 1, 1975 date and to allow a State to submit this notification at any time. It should be noted that a State is not required to submit this notification, since the existence of an allowable incremental increase in air quality has little impact in an area that must decrease air quality in order to attain the national standards. Additional guidance for States wishing to exempt an area that pervasively exceeds standards is available from EPA's Regional Offices.

An error in the wording of paragraph (d)(1) is also corrected below; the revised wording indicates that a source which is modified, but does not increase the amount of sulfur oxides or particulate matter, is not subject to the new source review requirements of paragraph (d). In addition, the words at the end of paragraph (d)(3) are changed from "since the effective date of this para-

graph" (i.e., January 6, 1975) to "January 1, 1975." This is to make this wording consistent with the rest of the regulation, which requires that significant deterioration be based on the deterioration occurring since January 1, 1975. Finally, typographical errors in paragraphs (d) and (e) are corrected by inserting the word "extent" in the last phrase of subdivision (d)(4)(iii), and by inserting the phrase "by no more than 30 days" in subdivision (e)(1)(vi). Again, these changes correct minor drafting errors and no change in the scope of the regulations is intended.

The requirements of paragraph (d)(3)(ii)(b) are modified below to require that a State proposing to reclassify an area must notify any Indian Governing Body or Federal Land Manager whose lands may be affected by the reclassification.

Paragraph (f)(2)(i) of the December 5 regulations requires appropriate consultation between air pollution control agencies and land use planning agencies in cases when EPA delegates the new source review requirement to the State or local level. The provisions of paragraph (f)(2)(i) are modified below to require that this consultation involve the State or local agency primarily responsible for managing land use, as opposed to the land use planning agency. Since the required consultation involves actions on individual requests to construct, the Administrator feels it more appropriate for the consultation to involve the agency primarily responsible for implementing any applicable land use plan than the agency responsible for developing the land use plan.

It has come to the Administrator's attention that there is some confusion concerning the need to precisely determine baseline air quality concentrations in all areas of the country. Baseline air quality data are not needed in order to implement the regulations, since significant deterioration is defined in terms of air quality increments



rather than absolute air quality levels. Of course, in Class III areas, the basis for approval or disapproval is related to absolute air quality levels (i.e., the national standards), and in such cases information on existing air quality is needed. However, the approval/disapproval decision as related to possible violations of the national standards is not a new requirement added by the significant deterioration regulations. Such procedures are presently being implemented by most States under their implementation plans, which were approved as meeting the requirements of § 51.18 of this chapter.

The term "baseline air quality" is used in an abstract sense to establish the "starting point" for defining significant deterioration. It is essentially based on air quality as of 1974, although the specific concentration need not be known. To eliminate the confusion generated by the term baseline air quality data, this phrase has been eliminated from the regulation. The language of paragraph (c)(2) has been modified to specify that the Class I and II increments refer to air quality increases occurring since January 1, 1975. However, the impact of sources granted approval to construct or modify prior to January 1, 1975 but which were not yet operating prior to that date, would not be counted against the applicable increments. The language of paragraph (d)(2)(i) has also been modified to be consistent with the above changes. These changes in no way alter the original intent of the regulation.

As indicated in the December 5 preamble, these regulations will be carried out through EPA's Regional Offices in accordance with the provisions of § 52.16, which also lists the addresses of each Regional Office.

The December 5 preamble also indicated that the technical procedures for determining the air quality impact of a new source would generally be based on the following publications: "Guidelines for Air Quality Maintenance

Planning and Analysis," Vols. 10 and 12. These publications, along with the technical support document for the significant deterioration regulations, are available from the National Technical Information Service, 5258 Port Royal Road, Springfield, Va. 22151. Orders should include the publication number and payment as follows:

Technical Support Document—EPA Regulations for Preventing the Significant Deterioration of Air Quality publication number P. B. 240215/AS, \$5.25.

Vol. 10, "Reviewing New Stationary Sources," publication number 237535/AS, \$4.75.

Vol. 12, "Applying Atmospheric Simulation Models to Air Quality Maintenance Areas," publication number 237750/AS, \$4.25.

The Administrator finds good reason for promulgating these amendments without having first proposed them and for making them effective June 12, 1975, since:

1. The modifications are generally minor clarifications and corrections.
2. The only changes which modify the intent of the December 5 regulations involve minor procedural changes and therefore add no major substantive requirements.

(Secs. 110(c) and 301(a), Clean Air Act as amended (42 U.S.C. 1857-5(c) and 1857g(a)).)

Dated: June 5, 1975.

RUSSELL E. TRAIN,  
Administrator.

## SUBPART A—GENERAL PROVISIONS

Subpart A, Part 52, Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

1. Section 52.21 is amended by revising paragraphs (a), (b)(1), (6), and (7), (c)(1), (2)(i), and (iii), (3)(ii)(b) and (vi)(a), (d)(1), (2)(i), (3), and (4)(iii), (e)(1)(vi), and (f)(2)(i); and by adding new paragraphs (c)(3)(ii) (e) and (vi) (f), to read as follows:

§52.21 *Significant deterioration of air quality.*

(a) *Plan disapproval.* Subsequent to May 31, 1972, the Administrator reviewed State implementation plans to determine whether or not the plans permit or prevent significant deterioration of air quality in any portion of any State where the existing air quality is better than one or more of the secondary standards. The review indicates that State plans generally do not contain regulations or procedures specifically addressed to this problem. Specific disapprovals are listed, where applicable, in Subparts B through DDD of this part. No disapproval with respect to a State's failure to prevent significant deterioration of air quality shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portion of plans approved or promulgated under this part.

(b) *Definitions.* For the purpose of this section:

(1) "Facility" means an identifiable piece of process equipment. A stationary source is composed of one or more pollutant-emitting facilities.

• • • • •

(6) "Construction" means fabrication, erection or installation of a stationary source.

(7) "Commenced" means that an owner or operator has undertaken a continuous program of construction or

modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(c) *Area designation and deterioration increment.* (1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. The provisions of this paragraph do not apply in these counties or other functionally equivalent areas that pervasively exceeded any national ambient air quality standards during 1974 for sulfur dioxide or particulate matter and then [25006] only with respect to such pollutants. States may notify the Administrator at any time of those areas which exceeded the national standards during 1974 and therefore are exempt from the requirements of this paragraph.

(2)(i) For purposes of this paragraph, areas designated as Class I or II shall be limited to the following increases in pollutant concentration occurring since January 1, 1975: • • •

(iii) The air quality impact of sources granted approval to construct or modify prior to January 1, 1975 (pursuant to the approved new source review procedures in the plan) but not yet operating prior to January 1, 1975, shall not be counted against the air quality increments specified in paragraph (c)(2)(i) of this section.

(3) • • •

(ii) • • •

(b) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the



proposed redesignation are notified at least 30 days prior to the public hearing, and

• • • • •

(e) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

• • • • •

(vi) • • •

(a) Any redesignation proposed pursuant to subdivisions (ii) and (iii) of this subparagraph shall be approved unless the Administrator determines (1) that the requirements of subdivisions (ii) and (iii) of this subparagraph have not been complied with, (2) that the state has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3)(ii)(d) of this paragraph or (3) that the State has not requested and received delegation of responsibility for carrying out the new source review requirements of paragraphs (d) and (e) of this section.

• • • • •

(f) The requirements of paragraph (c) (3)(vi)(a)(3) that a State request and receive delegation of the new source review requirements of this section as a condition to approval of a proposed redesignation, shall include as a minimum receiving the administrative and technical functions of the new source review. The Administrator will carry out any required enforcement action in cases where the State does not have adequate legal authority to initiate such actions. The Administrator may waive the requirements of paragraph (c)(3)(vi)(a)(3) if the State Attorney-General has determined that the State cannot accept delegation of the administrative/technical functions.

• • • • •

(d) *Review of new sources.* (1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the requirements of this paragraph apply to any new or modified stationary source of the type identified below which has not commenced construction or modification prior to June 1, 1975. A source which is modified, but does not increase the amount of sulfur oxides or particulate matter emitted, or is modified to utilize an alternative fuel, or higher sulfur content fuel, shall not be subject to this paragraph.

• • • • •

(2) • • •

(i) The effect on air quality concentration of the source or modified source, in conjunction with the effects of growth and reduction in emissions after January 1, 1975, of other sources in the area affected by the proposed source, will not violate the air quality increments applicable in any other areas. The analysis of emissions growth and reduction after January 1, 1975, or other sources in the areas affected by the proposed source shall include all new and modified sources granted approval to construct pursuant to this paragraph; reduction in emissions from existing sources which contributed to air quality during all or part of 1974; and general commercial, residential, industrial, and other sources of emissions growth not exempted by paragraph (c)(2)(iii) of this section which has occurred since January 1, 1975.

• • • • •

(3) In making the determinations required by paragraph (d)(2) of this section, the Administrator shall, as a minimum, require the owner or operator of the source subject to this paragraph to submit: site information; plans, description, specifications, and drawings showing

the design of the source; information necessary to determine the impact that the construction or modification will have on sulfur dioxide and particulate matter air quality levels; and any other information necessary to determine that best available control technology will be applied. Upon request of the Administrator, the owner or operator of the source shall also provide information on the nature and extent of general commercial, residential, industrial, and other growth which has occurred in the area affected by the source's emissions (such area to be specified by the Administrator) since January 1, 1975.

(4) . . .

(iii) Whenever any new or modified source is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this paragraph shall be coordinated with the broad environmental reviews under that Act, to the maximum extent feasible and reasonable.

(e) . . .

(1) . . .

(vi) The Administrator may extend each of the time periods specified in paragraphs (e)(1)(ii), (iv), or (v) of this section by no more than 30 days or such other period as agreed to by the applicant and the Administrator.

. . . . .

(f) . . .

(2) . . .

(i) Where the agency designated is not an air pollution control agency, such agency shall consult with the appropriate State and local air pollution control agency prior to making any determination required by paragraph (d) of this section. Similarly, where the agency designated does

not have continuing responsibilities for managing land use, such agency shall consult with the appropriate State and local agency which is primarily responsible for managing land use prior to making any determination required by paragraph (d) of this section.

. . . . .

#### SUBPART B—ALABAMA

2. Subpart B is amended by adding § 52.60 as follows:

##### § 52.60 Significant deterioration of air quality.

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21 (b), (c), (d), (e) and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Alabama.

#### SUBPART C—ALASKA

3. Subpart C is amended by adding § 52.96 as follows:

##### § 52.96 Significant deterioration of air quality.

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Alaska.



## SUBPART D—ARIZONA

4. Subpart D is amended by adding § 52.144 as follows:

§ 52.144 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable [25007] implementation plan for the State of Arizona.

## SUBPART E—ARKANSAS

5. Subpart E is amended by adding § 52.181 as follows:

§ 52.181 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Arkansas.

## SUBPART F—CALIFORNIA

6. Subpart F is amended by adding § 52.269 as follows:

§ 52.269 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of California.

## SUBPART G—COLORADO

7. Subpart G is amended by adding § 53.343 as follows:

§ 52.343 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Colorado.

## SUBPART H—CONNECTICUT

8. Subpart H is amended by adding § 52.382 as follows:

§ 52.382 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Connecticut.

## SUBPART I—DELAWARE

9. Subpart I is amended by adding § 52.432 as follows:

§ 52.432 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Delaware.

## SUBPART J—DISTRICT OF COLUMBIA

10. Subpart J is amended by adding § 52.499 as follows:

§ 52.499 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the District of Columbia.

## SUBPART K—FLORIDA

11. Subpart K is amended by adding § 52.530 as follows:

§ 52.530 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Florida.

## SUBPART L—GEORGIA

12. Subpart L is amended by adding § 52.581 as follows:

§ 52.581 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Georgia.

## SUBPART M—HAWAII

13. Subpart M is amended by adding § 52.632 as follows:

§ 52.632 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Hawaii.



## SUBPART N—IDAHO

14. Subpart N is amended by adding § 52.683 as follows:

§ 52.683 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Idaho.

## SUBPART O—ILLINOIS

15. Subpart O is amended by adding § 52.738 as follows:

§ 52.738 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Illinois.

## SUBPART P—INDIANA

16. Subpart P is amended by adding § 52.793 as follows:

§ 52.793 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Indiana.

## SUBPART Q—IOWA

17. Subpart Q is amended by adding § 52.833 as follows:

§ 52.833 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, [25008] since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Iowa.

## SUBPART R—KANSAS

18. Subpart R is amended by adding § 52.884 as follows:

§ 52.884 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Kansas.

## SUBPART S—KENTUCKY

19. Subpart S is amended by adding § 52.931 as follows:

§ 52.931 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Kentucky.

## SUBPART T—LOUISIANA

20. Subpart T is amended by adding § 52.985 as follows:

§ 52.985 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Louisiana.

## SUBPART U—MAINE

21. Subpart U is amended by adding § 52.1029 as follows:

§ 52.1029 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include pro-

cedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Maine.

## SUBPART V—MARYLAND

22. Subpart V is amended by adding § 52.1116 as follows:

§ 52.1116 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Maryland.

## SUBPART W—MASSACHUSETTS

23. Subpart W is amended by adding § 52.1161 as follows:

§ 52.1161 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made



a part of the applicable implementation plan for the State of Massachusetts.

#### SUBPART X—MICHIGAN

24. Subpart X is amended by adding § 52.1180 as follows:

##### § 52.1180 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Michigan.

#### SUBPART Y—MINNESOTA

25. Subpart Y is amended by adding § 52.1234 as follows:

##### § 52.1234 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Minnesota.

#### SUBPART Z—MISSISSIPPI

26. Subpart Z is amended by adding § 52.1280 as follows:

##### § 52.1280 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Mississippi.

#### SUBPART AA—MISSOURI

27. Subpart AA is amended by adding § 52.1339 as follows:

##### § 52.1339 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Missouri.

#### SUBPART BB—MONTANA

28. Subpart BB is amended by adding § 52.1382 as follows:

##### § 52.1382 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include pro-

cedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Montana.

#### SUBPART CC—NEBRASKA

29. Subpart CC is amended by adding § 52.1436 as follows:

##### § 52.1436 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable [25009] implementation plan for the State of Nebraska.

#### SUBPART DD—NEVADA

30. Subpart DD is amended by adding § 52.1485 as follows:

##### § 52.1485 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made

a part of the applicable implementation plan for the State of Nevada.

#### SUBPART EE—NEW HAMPSHIRE

31. Subpart EE is amended by adding § 52.1529 as follows:

##### § 52.1529 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of New Hampshire.

#### SUBPART FF—NEW JERSEY

32. Subpart FF is amended by adding § 52.1603 as follows:

##### § 52.1603 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of New Jersey.



## SUBPART GG—NEW MEXICO

33. Subpart GG is amended by adding § 52.1634 as follows:

§ 52.1634 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of New Mexico.

## SUBPART HH—NEW YORK

34. Subpart HH is amended by adding § 52.1689 as follows:

§ 52.1689 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of New York.

## SUBPART II—NORTH CAROLINA

35. Subpart II is amended by adding § 52.1778 as follows:

§ 52.1778 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of North Carolina.

## SUBPART JJ—NORTH DAKOTA

36. Subpart JJ is amended by adding § 52.1829 as follows:

§ 52.1829 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of North Dakota.

## SUBPART KK—OHIO

37. Subpart KK is amended by adding § 52.1884 as follows:

**§ 52.1884 Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Ohio.

## SUBPART LL—OKLAHOMA

38. Subpart LL is amended by adding § 52.1929 as follows:

**§ 52.1929 Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Oklahoma.

## SUBPART MM—OREGON

39. Subpart MM is amended by adding § 52.1987 as follows:

**§ 52.1987 Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include pro-

cedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Oregon.

## SUBPART NN—PENNSYLVANIA

40. Subpart NN is amended by adding § 52.2058 as follows:

**§ 52.2058 Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Pennsylvania.

## SUBPART OO—RHODE ISLAND

41. Subpart OO is amended by adding § 52.2083 as follows:

**§ 52.2083 Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a



part of the applicable implementation plan for the State of Rhode Island.

#### SUBPART PP—SOUTH CAROLINA

42. Subpart PP is amended by adding § 52.2131 as follows:

##### § 52.2131 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, [25010] since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of South Carolina.

#### SUBPART QQ—SOUTH DAKOTA

43. Subpart QQ is amended by adding § 52.2178 as follows:

##### § 52.2178 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of South Dakota.

#### SUBPART RR—TENNESSEE

44. Subpart RR is amended by adding § 52.2233 as follows:

##### § 52.2233 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Tennessee.

#### SUBPART SS—TEXAS

45. Subpart SS is amended by adding § 52.2303 as follows:

##### § 52.2303 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Texas.

#### SUBPART TT—UTAH

46. Subpart TT is amended by adding § 52.2346 as follows:

##### § 52.2346 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include pro-

cedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Utah.

#### SUBPART UU—VERMONT

47. Subpart UU is amended by adding § 52.2380 as follows:

##### § 52.2380 Significant deterioration of air quality.

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Vermont.

#### SUBPART VV—VIRGINIA

48. Subpart VV is amended by adding § 52.2451 as follows:

##### § 52.2451 Significant deterioration of air quality.

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a

part of the applicable implementation plan for the State of Virginia.

#### SUBPART WW—WASHINGTON

49. Subpart WW is amended by adding § 52.2497 as follows:

##### § 52.2497 Significant deterioration of air quality.

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Washington.

#### SUBPART XX—WEST VIRGINIA

50. Subpart XX is amended by adding § 52.2528 as follows:

##### § 52.2528 Significant deterioration of air quality.

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of West Virginia.



## SUBPART YY—WISCONSIN

51. Subpart YY is amended by adding § 52.2581 as follows:

§ 52.2581 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Wisconsin.

## SUBPART ZZ—WYOMING

52. Subpart ZZ is amended by adding § 52.2630 as follows:

§ 52.2630 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the State of Wyoming.

## SUBPART AAA—GUAM

53. Subpart AAA is amended by adding § 52.2676 as follows:

§ 52.2676 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for Guam.

## SUBPART BBB—PUERTO RICO

54. Subpart BBB is amended by adding § 52.2729 as follows:

§ 52.2729 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by ref- [25011] erence and made a part of the applicable implementation plan for Puerto Rico.

## SUBPART CCC—VIRGIN ISLANDS

55. Subpart CCC is amended by adding § 52.2779 as follows:

§ 52.2779 **Significant deterioration of air quality.**

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include pro-

cedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for the Virgin Islands.

#### SUBPART DDD—AMERICAN SAMOA

56. Subpart DDD is amended by adding § 52.2827 as follows:

##### § 52.2827 Significant deterioration of air quality.

(a) The requirements of section 101(b)(1) of the Clean Air Act are not met, since the plan does not include procedures for preventing the significant deterioration of air quality.

(b) *Regulation for preventing significant deterioration of air quality.* The provisions of § 52.21(b), (c), (d), (e), and (f) are hereby incorporated by reference and made a part of the applicable implementation plan for American Samoa.

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

##### *Tennessee: Disapproval of Legal Authority*

On May 31, 1972 (37 FR 10842), the Administrator approved portions of the Tennessee plan to attain and maintain the national ambient air quality standards. At that time, the plan was disapproved as failing to satisfy the requirements of 40 CFR 51.11(a)(3) since the State lacked legal authority to control motor vehicle activity

during emergency episodes of air pollution. It has since come to the attention of the Administrator that there are other deficiencies in the State's legal authority to enforce the emission limiting regulations of its approved plan. The purpose of the present notice is to describe these deficiencies and to clarify the Agency's intentions in their regard.

On September 13, 1973, in Opinion No. 52, rendered to the Tennessee Department of Public Health, the State's Assistant Attorney General, C. Hayes Cooney, ruled that: (1) State agencies are not included in the definition of "person" as found in section 53-3409(f) of the Tennessee Code Annotated; and (2) State agencies are not subject to local air pollution regulations adopted pursuant to a private act which does not specifically provide for regulation of a State agency. These opinions were reiterated in a letter of January 24, 1974, from the Tennessee Attorney General's office to the Agency's Region IV office. Since the State of Tennessee lacks legal authority to enforce its emission limiting regulations in the case of facilities owned or operated by the State, the Administrator hereby disapproves the plan in this particular. Elsewhere in this publication, the Administrator proposes for incorporation in the Tennessee plan a definition of "person" which includes sources owned or operated by the State. It is the Administrator's intention to enforce, in the case of State-owned or operated facilities, the existing emission limits of the approved Tennessee plan, including those enacted by local governments, as needed to assure attainment and maintenance of all national ambient air quality standards in the State, and as called for by the original control strategies of the State's plan.

On July 3, 1974, the Technical Secretary of the Tennessee Air Pollution Control Board informed the Agency's Regional Administrator that the Tennessee Air Pollution Control Division had ceased to have legal authority to



control: (1) agricultural limestone production, through the enactment of Tennessee House Bill 1490 on February 21, 1974; and (2) woodwaste boilers, through the enactment of Tennessee House Bill 1845 on March 22, 1974. Accordingly, the Administrator hereby disapproves the Tennessee plan as lacking legal authority to control these two categories of sources. It is the Agency's intention to enforce, in the case of such sources, the existing emission limiting regulations of the approved Tennessee plan, including those enacted by local governments, as needed to assure the attainment and maintenance of all national ambient air quality standards in Tennessee, and as called for by the original control strategies of the State's plan.

These actions are effective July 14, 1975.

(Sec. 110(a), Clean Air Act (42 U.S.C. 1857e-5(a)))

Dated: June 6, 1975.

RUSSELL E. TRAIN,  
*Administrator.*

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

SUBPART RR—TENNESSEE

In § 52.2224, paragraphs (c), (d), and (e) are added as follows:

§ 52.2224 **Legal authority.**

• • • • •

(c)(1) The requirements of § 51.11(a)(2) of this chapter are not met since the definition of "person" set forth in the Tennessee Air Quality Act and in the State implementation plan does not include facilities owned or operated by the State. Therefore, section 52-3409(f) of the Tennessee Code Annotated and section 30 of Chapter II of the Tennessee Air Pollution Control Regulations are disapproved.

(d) The requirements of § 51.11(a)(2) of this chapter are not met since the State lacks legal authority, as a result of the enactment of House Bill 1490 by the 1974 Tennessee legislature, to control emissions from the quarrying and processing of agricultural limestone. Therefore, section 53-3424 of the Tennessee Code Annotated is disapproved.

(e) The requirements of § 51.11(a)(2) of this chapter are not met since the State lacks legal authority, as a result of the enactment of House Bill 1845 by the 1974 Tennessee legislature, to control emissions from air contaminant sources which use woodwaste only as fuel. Therefore, the last sentence of section 53-3422 of the Tennessee Code Annotated is disapproved.

[42011] \*

[Federal Register, Vol. 40, No. 176—Wednesday,  
September 10, 1975]

Title 40—Protection of Environment

[FRL 418-2]

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY  
SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION  
PLANS

**Prevention of Significant Air Quality Deterioration**

On December 5, 1974 (39 FR 42510) the Administrator of the Environmental Protection Agency published final regulations for the prevention of significant deterioration of air quality applicable in all 55 states and territories. The plan for preventing significant deterioration, as set forth on December 5, 1974, is implemented through a preconstruction review of major stationary sources to determine if construction of such sources in a particular area would cause a violation of specified air quality increments. On June 9, 1975 (40 FR 24534) the Administrator proposed the addition of ferroalloy production facilities to the list of sources subject to the preconstruction review. That notice also described the criteria the Administrator intends to use in adding further sources in the future. These criteria are:

(1) A new source performance standard for sulfur dioxide (SO<sub>2</sub>) or particulate matter has been established for the source or any facility of the source under Part 60

\* Bracketed numbers represent the page in the *Federal Register* upon which material following such a number can be found.

of this chapter, and (2) The established new source performance standard will allow any anticipated future plant affected by the standard to emit SO<sub>2</sub> or particulate matter in excess of 25 pounds per hour from the affected facility or facilities when operating at maximum design capacity.

As new source performance standards are proposed, they will be examined to determine if, based on the allowable emission limit and the expected size of new plants, the 25 pounds per hour criterion would be exceeded. Where the affected facility or facilities could exceed this criterion, the proposal of the new source performance standards will also include a proposal to add such plants to the list of sources subject to the significant deterioration review; however, only those new plants which will exceed the 25 pounds per hour emission limitation will be required to undergo the preconstruction review.

Only ferroalloy production facilities were proposed to be added at this time, since they are the only source not already subject to the significant deterioration regulation which meet the above criteria. No restrictions were placed on the size ferroalloy production facility subject to the review, since all plants from this source category affected by the new source performance standard are expected to be of sufficient size to exceed the emission limitation criterion.

Only one comment<sup>1</sup> indicating agreement, was received on the June 9, 1975, proposal. Therefore, the Administrator is promulgating this action essentially as proposed, except for the addition of a provision making the preconstruction review for ferroalloy production facilities applicable only to such facilities commencing construction after October 5, 1975, instead of the June 1, 1975, date specified for the other 18 source categories. In the Administrator's judgment, it would be inequitable to make the regulation retroactive to June 1, 1975, for a source category that is



only now being added to the list of sources subject to review.

Also in this notice, several minor corrections are being made to rectify errors that appeared in EPA's June 12, 1975, promulgation of miscellaneous amendments to the significant deterioration regulations.

These regulations will be effective October 5, 1975.

(Sections 110(c), 301(a) of the Clean Air Act as amended (42 U.S.C. 1857c-5(c) 1857g(a))).

Dated: September 4, 1975.

JOHN QUARLES,  
*Acting Administrator.*

[42012]

#### SUBPART A—GENERAL PROVISIONS

Subpart A, Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

##### § 52.21 [Amended]

1. In § 52.21, paragraph (d) is revised by adding the phrase, "except as specifically provided below", after the end of the second sentence of paragraph (d)(1). Also in paragraph (d)(1), the following subdivision is added in proper order:

"(xix) Ferroalloy production facilities commencing construction after October 5, 1975.

FEDERAL REGISTER Doc. 75-15414, published on June 12, 1975, is corrected as follows:

2. On page 25006, § 52.21 is corrected by inserting the phrase "the air quality increments applicable in the area where the source will be located nor" after the word "violate" in the first sentence of paragraph (d)(2)(i). Also, the second sentence of paragraph (d)(2)(i) is corrected by changing the word following the date "January 1, 1975," from "or" to "of".

3. On page 25006, five asterisks should be inserted following the amendatory language of § 52.21(d)(4)(iii), thus denoting that existing subparagraph (5) of paragraph (d), as promulgated on December 5, 1974 (39 FR 42510), remains unchanged.

##### § 52.269 [Amended]

##### § 52.985 [Amended]

4. On page 25007, §§ 52.269 and 52.985 and redesignated as §§ 52.270 and 52.986, respectively.

5. On page 25008, § 52.1161 is redesignated as § 52.1165.

[FR Doc. 75-23950 Filed 9-9-75; 8:45 am]

[FRL 413-2]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION  
PLANS

*Revision to the Virgin Islands Implementation Plan*

On May 31, 1972 (37 FR 10905), and March 8, 1973 (38 FR 6280), pursuant to section 110 of the Clean Air Act (42 U.S.C. 1857c-5(a)), and 40 CFR Part 51, the Administrator disapproved portions of the Virgin Islands implementation plan because the plan: (1) did not adequately provide a means for the preconstruction review of new or modified stationary sources if said construction or modification would interfere with the attainment and maintenance of national standards; and (2) did not provide for the preconstruction review or modification of indirect sources if said construction or modification would interfere with the maintenance of national standards.

On October 28, 1972 (37 FR 23092), the Administrator promulgated a regulation to correct the deficiency with regard to the preconstruction and modification review of stationary sources of air pollution. On February 25, 1974 (39 FR 7276) EPA promulgated a Federal indirect source review regulation (40 CFR 52.22(b)) to be incorporated into the implementation plans of those States and territories (including the Virgin Islands) which had failed to submit their own approvable indirect source regulations. This regulation was amended on July 9, 1974 (39 FR 25293).

On February 12, 1974 the Governor of the Virgin Islands submitted proposed revisions to the Virgin Islands implementation plan which consisted of sections 206-30 (Review of new sources and modification) and section 206-31 (Review of new or modified indirect sources) of the Virgin Islands Air Pollution Control Code. Additional information was received from the Assistant Di-

rector of the Division of Environmental Health, Department of Conservation and Cultural Affairs on April 10, 1975. This information was intended to result in the revocation of the EPA disapproval notices of May 31, 1972 and March 8, 1973 by providing for a review procedure prior to construction of new or modified direct and indirect sources of air pollution.

These regulations were subject to Department of Health public hearings on September 10, and 11, 1973 and became legally effective in December 1974 after their publication in the Virgin Islands Register, Volume XV, No. 1. The materials submitted in support of the plan revision include information submitted by the Governor on February 12, 1973 and information submitted by the Assistant Director, Department of Conservation and Cultural Affairs on April 10, 1975 as follows:

- (1) A notice of public hearings held on September 10 and 11, 1973;
- (2) A certification from the Assistant Director that public hearings were held on September 10 and 11, 1973;
- (3) Section 206-30 of the Virgin Islands Air Pollution Control Code;
- (4) Section 206-31 of the Virgin Islands Air Pollution Control Code;
- (5) Copies of sections 206-30 and 206-31 as received from the Equity Publishing Company showing that the regulations were published as part of the Virgin Islands Register, Volume XV, No. 1, dated December, 1974.

The Environmental Protection Agency published in the Federal Register of April 9, 1974 (39 FR 12872), a notice which announced receipt of the proposed revisions to the Virgin Islands plan and which provided the opportunity for a 30-day public comment period on these proposed re-



visions. The public comment period ended on May 9, 1974 and no comments were submitted to the Agency.

The Administrator has reviewed the proposed revisions and has determined that section 206-30 does not meet all of the EPA requirements regarding revisions to implementation plans and is, therefore, only approvable in part. While subsections 206-30(f)(1)-(5) clearly and specifically list many types of stationary sources which will be exempt from preconstruction review, subsection 206-30(f)(6) adds a general exemption for any sources which the Territory determines to be "of minor significance." EPA approval of such an undefined class of exempt sources would clearly be improper under section 110 of the Clean Air Act, since the Territory could in effect substantively amend its implementation plan on an ad hoc basis without EPA approval. Subsection 206-30(f)(6) is therefore being disapproved.

In addition, section 206-30 does not meet the public comment/agency analysis requirements of 40 CFR 51.18 (h). The Administrator, as part of this notice is promulgating a regulation which will insure that the requirements of 40 CFR 51.18(h) are met.

Section 206-31, which requires the preconstruction review of indirect sources of air pollution, is being approved. It should be noted that the Federal indirect source regulation promulgated in 1974 for the Virgin Islands and most other states (40 CFR 52.22(b)) requires that large highways and airports be subjected to photochemical oxidant and nitrogen dioxide impact review, while the Virgin Islands regulation considers carbon monoxide impact only. The Administrator is taking no action to disapprove the Virgin Islands regulation in this regard, however, since the Federal regulation is currently not effective. See 40 FR 28064, July 3, 1975. Moreover, EPA must conduct additional rulemaking to set forth

oxidant-nitrogen dioxide impact review procedures before the Federal regulation becomes effective as to highways and airports. See 40 FR 28065, July 3, 1975; 39 FR 25295, July 9, 1974. At such time as EPA completes its oxidant-nitrogen dioxide rulemaking and reinstates the provisions of 40 CFR 52.22(b) as to highways and airports, EPA would be required to promulgate such highway-airport review requirements into the Virgin Islands plan if the plan still does not contain such requirements.

It should also be noted that today's approval of the Virgin Islands indirect source regulation is in no way intended to compromise the validity of EPA's indefinite suspension of the parking-related aspects of its own indirect source regulation, 40 CFR 52.22(b), announced on July 3, 1975 (40 FR 28064). As stated in that announcement, the suspension related to the Federal review regulation only; the Administrator continues to encourage the States to develop their own indirect source regulations and to submit them to EPA for approval.

The Administrator will not subject the correction of section 206-30 promulgated below to additional rulemaking, since all that is involved is a technical correction to the Virgin Islands implementation plan which insures that the procedural requirements of 40 CFR 51.18(h) will be met.

*Effective date:* These revisions become effective October 10, 1975.

(42 U.S.C. 1857c-5 and 1857g(a))

Dated: September 4, 1975.

JOHN QUARLES,  
Acting Administrator.

[FR Doc. 75-23949 Filed 9-9-75; 8:45 am]

**SUPREME COURT OF THE UNITED STATES**

No. 76-529 •

MONTANA POWER COMPANY, ET AL.,  
*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
ET AL.

ORDER ALLOWING CERTIORARI. FILED April 4, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia—Circuit is granted, limited to the following questions: 1. Whether regulations promulgated by the Environmental Protection Agency to prevent the significant deterioration of air quality are authorized by the Clean Air Act; 2. Whether the Clean Air Act permits the Environmental Protection Agency to adopt regulations which grant to federal land managers and Indian governing bodies power to reclassify federal and Indian lands within their jurisdiction. The case is consolidated with Nos. 76-585, 76-594, 76-603, 76-619 and 76-620 and a total of one and one-half hours is allotted for oral argument.

Mr. Justice Powell took no part in the consideration or decision of this petition.

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• A corresponding order was entered by this Court in Nos. 76-585, 76-594, 76-603, 76-619, and 76-620.